THE INDIAN STATES AND THE FEDERATION

P Sivaswamy Aiyer

24-6-1939

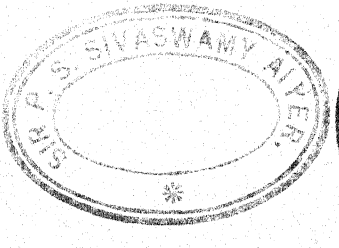
THE INDIAN STATES AND THE FEDERATION

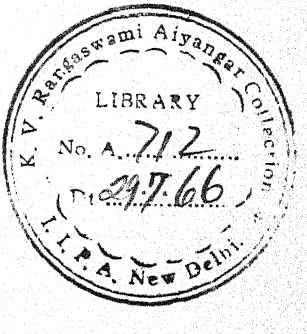
BY

M. K. VARADARAJAN, M.A., B.L.

With a Preface by

THE MOST HONOURABLE THE MARQUESS OF LOTHIAN, C.H.





HUMPHREY MILFORD
OXFORD UNIVERSITY PRESS
1939

OXFORD UNIVERSITY PRESS
AMEN HOUSE E.C. 4

LONDON EDINBURGH GLASGOW
NEW YORK TORONTO MELBOURNE
CAPETOWN BOMBAY CALCUTTA
MADRAS

HUMPHREY MILFORD
PUBLISHER TO THE
UNIVERSITY

DEDICATED TO

SIR MIRZA M. ISMAIL, K.C.I.E., O.B.E.,

(Dewan of Mysore)

the indefatigable advocate of the abolition
of burdens borne by the States.

CONTENTS

PREFACE

BY

THE MOST HONOURABLE THE MARQUESS OF LOTHIAN, C.H.

I AM glad to commend this excellent study of the position of the Indian States under the new federal constitution. Mr. Varadarajan has mastered not only the Act but the proceedings of the Round Table Conference and the Joint Select Committee, as well as the debates in Parliament and the discussions which have since taken place in India. He sets forth with judgement and accuracy both the legal and the constitutional position of the States in the Federation and expresses some strong opinions as to the right solution of some of the knotty problems which inevitably arise from the attempt to combine democratic British-Indian Provinces with a feudal India which contains States in almost every stage of development, political, economic, and social. I am glad that he recognizes that the advantages of the scheme of Federation overwhelmingly outweigh the anomalies and inconsistencies which at present any form of Indian Federation must involve. The book should prove an invaluable guide to any one who wishes to understand how the Federation will work in its relationship to the Indian States.

LOTHIAN

AUTHOR'S PREFACE

THE passing of the Government of India Act has been followed by a number of admirable and well-written books dealing with the new Constitution; but the position of the States in the scheme of the Federation does not seem to have been dealt with so far in detail. An attempt is therefore made in the pages that follow to describe the Federal Constitution mainly from the point of view of the States and the implications of accession by them to the Federation. The book is devoted to the study of the relations of the State-members to the Federation and the problems to which the States, by virtue of their peculiar position in the polity of India, attach the highest importance.

M. K. VARADARAJAN

BANGALORE

CHAPTER I

THE EVOLUTION OF FEDERALISM IN INDIA

It was John Bright who was the first to suggest as far back as 1858 that the government of India should be constituted on a federal basis. When he made his suggestion, proposals for bringing the government of India under the direct control of the Crown were on the anvil, and the existence of the East India Company as a ruling power was about to be brought to a close, after it had accomplished one of the most remarkable achievements in ancient or modern history.

The Company took its birth in 1600 under a charter granted by Queen Elizabeth of England, and though it pursued its even career as a trading concern for a century and a half, it could not avoid being drawn into the political vortex which followed the disruption of the Moghal Empire. The battle of Plassey, 1757, and Baxar, 1764, which the Company had to wage against the Nawab of Bengal and the Nawab Vazier of Oudh, and the victories which attended its arms marked a turning point in the history of the Company. It acquired territorial sovereignty and became one of the powers in India. Thenceforward, under the guidance of a succession of Governors-General, ambitious and remarkable for their statesmanship and powers of organization, it gradually extended its sway and built up an Empire embracing the entire Indian peninsula.

Only thrice before in historic times had a single power succeeded in building up an Empire in India. The first was the Maurya dynasty, to which belonged the famous Buddhist Emperor, Asoka, whose beneficent rule was universally

acknowledged for a brief period in the third century B.C. The second was the Gupta dynasty whose Empire became famous under Samudra Gupta in the fourth century. The third was the Moghal Empire which was founded by Baber in the sixteenth century, reached its zenith under Akbar, and declined as rapidly as it had arisen after the death of Aurangazib.

All the three Empires were short-lived and none of them was as vast nor as strong and consolidated as that of the Company. Its foundations were, however, rudely shaken by the Indian Mutiny, and with the suppression of the Mutiny the Great Moghal, whose sovereignty had been nominally acknowledged even by the Company, finally disappeared from the scene. He was followed a year later by the Company itself when its authority was superseded by that of the Crown.

The change which took place in the government of India was thus described by the then Governor-General, Lord Canning: 'The last vestiges of the Royal House at Delhi, from which we had long been content to accept a vicarious authority, have been swept away. The Crown of England stands forth the unquestioned ruler and paramount in all India and is brought face to face with its feudatories. There is a reality in the suzerainty of the Sovereign of England which never existed before and which is eagerly acknowledged by the Chiefs.'

The map of India was then redrawn and the political divisions of the country broadly assumed the shape which they have to-day. On the one side there was British India made up of territories wrested from their previous rulers by the Company by conquests, annexations, and cessions. The Crown was the sovereign of these territories and governed them in accordance with statutes of Parliament. On the other side were the congeries of States which, during the turbulent period which followed the decay of the Moghal Empire, had placed themselves under the protection of the

Company for the defence and security of their dominions. The Crown was their suzerain, and its relations with them were governed by treaties, engagements or sanads concluded by the States when they entered the Company's ring of protection. Whatever the varieties and complexities of these instruments the general position was that the States were guaranteed security from without, the Crown acting for them in relation to foreign powers and intervening when the internal peace of their territories was seriously threatened.

The assumption of the government of India by the Crown was indeed a godsend to the States. During the latter days of the Company, their existence was seriously threatened by the doctrine of 'Lapse and Annexation' propounded by the great pro-consul, Lord Dalhousie, and applied with disastrous consequences to the States of Satara and Nagpur. The new régime was inaugurated by the Crown with an unequivocal declaration to maintain the integrity of the States and to perpetuate their dynasties. The Royal Proclamation of 1858 gave the Princes the solemn assurance that the treaties and engagements made with them by the Company were accepted by the Crown, that the Crown desired no extension of its territories and that it would respect the rights, dignity, and honour of the Indian Princes as its own. This assurance has been scrupulously fulfilled, and though now and then the Crown has been forced to set aside a ruler's authority on account of gross misrule, there has been no case of an annexation of a State to British India.

The States which were thus guaranteed security number in all about 562 and fall into three distinct classes:

I.	States the rulers of which are members of the Chamber of Princes in their own right . .	109
II.	States the rulers of which are represented in the Chamber of Princes by twelve members of their order elected by themselves . . .	126
III.	Estates, Jagirs, and others	327

The rulers of the first two classes of States have, in greater or less degree, political power, legislative, executive and judicial, over their subjects. The total area of all the States is 600,000 square miles, or more than one-third of the Indian continent, and they contain a population of 81 millions, or approximately one-fourth of the total population of India. The States do not form one solid or contiguous block of territory. They are to be found in all parts of India, interspersed in most cases in the midst of British territory, and form 'the most picturesque parts of India'. Some of them are ruled by the most ancient dynasties, the oldest of all being that of Udaipur in Rajputana, while most of them, especially the Mohammedan and Mahratta States, are of recent origin and barely two centuries old.

The States of Hyderabad and Kashmir are as big as Great Britain, several others are bigger than Holland or Denmark while many do not approach the size of Monaco. The premier State of Hyderabad has an area of 82,700 square miles and a population of 14 millions and a revenue of Rs. 6·5 crores. The State of Kashmir in the extreme north is of approximately equal size and has a population of 3½ millions. Mysore, in the south, has 6½ millions of inhabitants with an area of 30,000 square miles, so that it is larger than the Irish Free State and has thrice its population. Farther south are the densely populated States of Travancore and Cochin. The States of Gwalior and Jodhpur are equal in size to Mysore though not so populous. Nearly ninety States cluster together in Central India, and Bombay contains more than 150 of them. Kathiawar and Gujarat are parcelled out among 286 States, which, with the exception of a dozen, do not cover more than a few hundred acres, over which their rulers proudly exercise their authority, though their revenue is not greater than that of the annual income of an ordinary artisan.

The States are as diverse in their economic, political, and

administrative conditions as they are in their areas. A few of them, like Mysore, are highly industrialized, others rely mainly on agriculture, while many have neither industry nor agriculture. They are in all stages of development, many being still run on patriarchal lines, others just casting off their medieval garb and attempting to clothe themselves in modern garments, while a few like Mysore, Travancore, Cochin, and Baroda, have reached a high stage of development and maintain an administration, comparable in its standard with that in British India, and responsive to popularly elected chambers.

The one feature common to all the States is that they are not British territory. The King's writ does not run in them and neither Parliamentary legislation nor the enactments of the British Indian Legislature are applicable to them. Each has its own system of laws and administrative machinery and is governed by its ruler who is the source of all authority in the State.

The major States exercise internal sovereignty in the fullest measure. Such States number 109, and all of them are members in their own right of the Chamber of Princes, the constitution of which provides that 'this Chamber shall be composed of Ruling Princes of India exercising full sovereign power and unrestricted civil and criminal jurisdiction over their subjects and the power to make their own laws'.

The authority of the other States is restricted in various ways. Many of them can exercise no kind of jurisdiction over British subjects or over certain classes of their own subjects. For example, the Ruler of Cutch has no authority over the Jareja nobles of his own State, and the Ruler of Kolhapur, similarly, has no jurisdiction over his own feudatories. The authority of other States is restricted in respect of certain classes of offences. Many of the States in Kathiawar and Bihar and Orissa, for instance, are not competent to try certain classes of criminal cases occurring within their terri-

tories, like murder, homicide, and robbery. In several other cases, sentences of death passed by State tribunals are subject to confirmation by the Political officer accredited to the State. The class of cases withdrawn from the jurisdiction of the States is dealt with by the Political Officers of the British Government. The control thus exercised in the internal affairs of a State is political and diplomatic, and there is no assertion by the Crown of any territorial sovereignty over it nor is there any claim of legislative power.[1]

The question whether the Indian States are sovereign, and if so to what extent, has been discussed often, and it is unnecessary to dwell on it here at length. The weight of authority strongly leans to the view that they are semi-sovereign, and that they retain all those elements of sovereignty which they have not either expressly or impliedly transferred to the Crown. But a minority opinion, basing itself on the Justinian conception of sovereignty as indivisible and unitary, has denied the right of the Indian States to be classed as sovereign. If the Justinian definition that the sovereign is one who owns no superior other than himself and is limited by no will other than his own, is accepted, it follows that the Indian States are not sovereign as they acknowledge the supremacy of the British Crown. The Justinian conception of sovereignty, however, has been condemned as a barren and metaphysical abstraction not approximating to political facts. Those who still cling to it and try to fit the political facts of India to their theory are driven to the conclusion that the Crown is the sovereign of the States and that the Princes administer their territories as delegates of the Crown, or as 'royal instruments'—a conclusion which is historically unsound. The rights of the States are in no way derived from the Crown, but were exercised by them even before they contracted the alliance of the East India Company. The Crown has only guaranteed their

[1] *Hemchand* v. *Azam* 33, Calcutta 219.

rights in return for certain other rights surrendered to it by the States.

The correct view of the relationship between the States and the Crown was stated by Sir Henry Maine in his minute on the Kathiawar case. 'It may perhaps be worth observing', he wrote, 'that according to the more precise language of modern publicists, "sovereignty" is divisible, but independence is not. Although the expression "partial independence" may be popularly used, it is technically incorrect. Accordingly, there may be found in India every shade and variety of sovereignty, but there is only one independent sovereign, the British Government.'

This view has gathered further support from recent juristic opinion which also regards sovereignty as divisible. In a well-known case Lord Finlay observed: 'It is obvious that for sovereignty there must be a certain amount of independence, but not in the least necessary that for sovereignty there should be complete independence. It is quite consistent with sovereignty that the sovereign may in certain respects be dependent upon another Power; the control, for instance, of foreign affairs may be completely in the hands of a protecting Power, and there may be agreements or treaties which limit the powers of the sovereign even in internal affairs without entailing a loss of the position of a sovereign Power.'[1] It is only on the basis of a division of sovereignty that a satisfactory explanation can be furnished of the relationship between the Indian States and the British Government.

The States were not taken into account by John Bright when he suggested a federal constitution for India. He had in mind only a federation of Provinces in which the States had no place whatsoever. Since his time, however, a slow and silent process of unification has been going on in India, which has left no room for doubt that the political future of

[1] *Duff Development Company* v. *Kelantine Government*, 1924 A.C. 797 at p. 814.

India lay in a federation embracing both Provinces and States as constituent units. The States' relationship with the British Government was no exception to the universal rule that all unequal alliances tend towards the major partner swallowing by slow degrees its minor associates and allies. The attitude of the British Government towards the States underwent a subtle change after the Mutiny, and it definitely adopted a policy of encroaching upon the rights and privileges of the States. The legal bases of this policy is well described by Mr. Panikkar in his book, *The Indian States and the Government of India.* The process of encroachment was greatly facilitated by the position of the British Government as the final authority for the decision of all disputes arising between itself and the States. By deciding all doubtful points in its own favour and by putting its own interpretation on the rights and obligations of the States, it gradually extended its authority far beyond the range of matters covered by treaties, engagements, and sanads. As a result of such extension the autonomy of the States was curtailed, and their original status as allies was converted into that of an integral part of the imperial polity.

This process of encroachment resulted in many cases in inflicting grave economic and fiscal injustice on the States, but its net result was in the main of incalculable benefit to India as a whole. It brought 'the two Indias' into closer contact with each other and knit them together economically and politically into a single unit under the Crown. The main lines on which this encroachment advanced were thus stated by Lord Chelmsford in his speech at the Princes' Conference: 'There is no doubt that with the growth of new conditions and the unification of India under the British Power political doctrines have constantly developed. In the case of extra-territorial jurisdiction—railways and telegraphs, limitation of armaments, coinage, currency and opium policy and the administration of the cantonments, to give some of the more

salient instances—the relations between the States and the Imperial Government have been changed. The change, however, has come about in the interests of India as a whole. We cannot deny, however, that the treaty position has been affected and that a body of usages, in some cases arbitrary but always benevolent, has come into being.'

Paramountcy was freely used as an instrument for bringing about the unification of India and the gradual concentration of the Government of India upon matters of all-India concern. With the development of railways in India, the States were asked to cede jurisdiction over railways passing through their territories as a matter of imperial policy, and the railways in the States were thus brought under the complete control of the Government of India. Similarly, by a series of agreements concluded with the States, all salt works in the States were either suppressed or acquired by the Government of India which was thus enabled to subject the inhabitants of the States to the salt tax in the same manner as the people in British India. The independent coinage of most of the States was quietly abolished, and the British rupee and its fractions were put in circulation in them as legal tender. Many of the States which possessed local postal systems were induced to abolish them and the British Indian system was introduced into the States. Thus there came into being a central administration of these great public services common to British India and the States. Similar progress was made in the removal of the barriers imposed on trade by a multiplicity of fiscal systems. Practically every State in India had from time immemorial levied transit duties on goods passing through its territories. The growth of the railway system was inimical to this form of taxation, and the Government of India, realizing its incompatibility with modern conditions had brought about its extinction. In the matter of sea customs, the duties levied by the Government of India affected the whole of India

including the inland States, which form the vast majority of the Indian States, and the incidence of sea customs fell alike on the Provinces and the States.

The result of this process of unification was that the ground-plan of a federation had gradually come into being by about the beginning of the present century. To a great extent defence, external affairs, railways, posts and telegraphs, currency and coinage, customs, salt and opium, were already 'federal subjects', administered by an all-India service. In respect of all of them a common policy applicable to British India and the States alike was determined by the same authority, viz. the Governor-General in Council, who, in the case of British India exercised his powers under the Government of India Act, and in the case of the States, acted as the agent of the Crown.

This was of course 'federalism in the embryonic stage', but 'it did not find expression in any appropriate institutions' like a federal legislature and a federal court. The States had no voice in the determination of policy in matters of all-India concern though they were equally affected with British India in such matters. The Central Legislature at Delhi, which after the Montagu–Chelmsford reforms acquired a powerful influence in the policy of the Government of India in these matters, contained a majority of elected members from British India, but not a single representative of the States. When it adopted a policy of discriminating protection the States were not consulted about it. The majority of them, as stated by the Indian States (Butler) Committee, derived no benefit from such protection; the request of Mysore for the protection of its nascent silk industry against Japan, for instance, received little sympathy. Their subjects had to pay, all the same, the enhanced price on imported goods and any other indirect taxes levied by the representatives from British India. So far as the States were concerned, it was clearly a case of taxation without representation.

Similarly, there was no judicial tribunal for the settlement of disputes arising between them and the Central Government. This function was exercised by the Government of India, acting as the agent of the Crown, though it was itself a party to such disputes; and there was no safeguard against further encroachments upon the rights of the States.

Moreover, as the Joint Parliamentary Committee pointed out, the existing arrangements under which economic policies, vitally affecting the interests of India as a whole, have to be formulated and carried out are being daily put to an ever-increasing strain, as the economic life of India develops. For instance, any imposition of internal indirect taxation in British India involves, with few exceptions, the conclusion of agreements with a number of States for concurrent taxation within their frontiers, or, in default of such agreement, the establishment of some system of internal customs duties—an impossible alternative, even if it were not precluded by the terms of the Crown's treaties with some States. Further, a common company law for India, a common banking law, a common body of legislation on copyright and trademarks, a common system of communications, are alike impossible. Conditions such as these, which have caused trouble and uneasiness in the past, are already becoming, and must in the future increasingly become, intolerable, as industrial and commercial development spreads from British India to the States.[1]

It was of course impossible under the circumstances to remedy these defects by restoring to the States the rights already acquired from them. This would indeed have been a retrogressive step and would have broken up the unity which had so far been achieved laboriously and at great cost. Nor was it possible to establish a strong unitary State in India by abolishing the States which the Crown had solemnly undertaken to maintain and perpetuate. The only practicable

[1] *Joint Parliamentary Committee Report*, para. 31.

alternative under the circumstances was a federal constitution, one which would give the States a voice in matters of all-India concern and offer at the same time a guarantee against further encroachments on their internal autonomy. The forces which had been working in India ever since the Mutiny were moving in this direction, and all that remained to be done was to associate the States formally in an administration which had already been practically federalized.

The Princes had come to realize the need for closer association with British India. The essential identity of the 'two Indias' had been stressed by Their Highnesses the Maharajas of Gwalior and Indore in responding to the invitation of Lord Hardinge to a conference to consider questions of higher education in the States. His Highness the Maharaja Gaekwar of Baroda, in welcoming the system of conferences initiated by Lord Chelmsford, expressed the hope that the system would develop into a permanent Council or Assembly of Princes.

Individual princes made no secret of their desire to unite with British India in a common federation. His Highness the Maharaja of Bikaner openly declared in 1929: 'I look forward to the day when a United India will be enjoying Dominion Status under the aegis of the King-Emperor, and the Princes and States will be in the fullest enjoyment of what is their due—as a solid federal body in a position of absolute equality with the federal Provinces of British India.' Similarly, in a frank statement, Sir Mirza Ismail, Dewan of Mysore, wrote: 'We have been held in tutelage till now. The Mysore Treaty gives full expression to the measure of the paternal guidance that was thought necessary for an Indian State at the time of the rendition of the State in 1881. In the past half-century we have grown up; the State has long enjoyed the reputation of being the "model State" in India; and we feel that the time has come for it to be taken out of the leading strings.'[1]

[1] *Morning Post*, 19 July 1934.

It had become a commonplace observation to say that the ultimate ideal to be aimed at in India was some sort of federal arrangement. The authors of the Montagu–Chelmsford Report, looking ahead to the future, pictured India as presenting only the external semblance of some form of federation. But though they had no hesitation in forecasting such a development as possible, they did not, however, desire to attempt to force the pace by 'artificial stimulation'. The Indian States (Butler) Committee were equally sure that India's future lay in a federation, which they regarded as a remote ideal.

Events were, however, moving faster towards the early realization of this ideal than was anticipated by the two committees. The Indian Statutory Commission, which was appointed in 1927, to report on the further measure of responsible government to be conferred on British India, emphasized that India was a geographical whole and confessed that it was impossible for them to conceive that any constitutional developments in British India could be devised and carried out to the end, while ignoring the Indian States. They stated frankly that, in the long run, the future of the States would be materially influenced by the course of development in British India. For this reason, they addressed a letter to the Prime Minister, in October 1929, drawing attention to the importance, when considering the direction which the future constitution of India was likely to take, of bearing in mind the relations which might develop between British India and the States. The Commission recommended the examination of the relationship between these two constituent parts of Greater India, and further recommended that a Conference should be called to which representatives of both British India and the States should be invited.[1]

A Conference, known as the Round Table Conference, was accordingly convened in London and was duly opened by

[1] *Indian Statutory Commission Report*, vol. ii, para. 227.

King George V on 12 November 1930. The Prime Minister presided, and all parties in Parliament were well represented. The total number of delegates was 89, of whom 57 were from British India, 16 from the States, and 16 were members of the Parliamentary delegation. At the very first session of the Conference, His Highness the Maharaja of Bikaner made, on behalf of the States, a dramatic pronouncement proposing that there should be a Federal Government embracing British India and Indian 'India', in which the Princes would be prepared to take their part. This proposal, which was quite unexpected, was seconded by the other States' representatives and was welcomed by all the parties represented at the Conference. The views of His Majesty's Government were summed up by the Prime Minister in his final speech, in which he stated that His Majesty's Government were prepared to accept the principle of an All-India Federation with a Federal Executive responsible to the Legislature.

The details of the picture were discussed at the next two Conferences and by several special Committees and sub-Committees appointed for the purpose. The final proposals of His Majesty's Government were embodied in the famous White Paper which was referred for consideration to the Joint Parliamentary Committee. The underlying principles of the scheme were Provincial Autonomy, All-India Federation and Central Responsibility with safeguards. These three principles are embodied in the Government of India Act, 1935.

CHAPTER II

ACCESSION OF THE STATES TO THE FEDERATION

THE component elements of the All-India Federation are the eleven autonomous British Provinces and such Indian States as join the Federation; and there are also included in it the four Chief Commissioner's Provinces of British India. It will be established by Royal Proclamation, on the presentation of an address to His Majesty by both Houses of Parliament praying that such a Proclamation may be issued. The Proclamation will declare that from a date mentioned in it the Provinces shall be united in a Federation of India with such Indian States as have acceded or may accede to the Federation.[1]

It is, however, provided that such Proclamation shall not be issued until the rulers of States:

(*a*) representing one-half the total population of the States, and
(*b*) entitled to not less than fifty-two seats in the Federal Upper Chamber,

have intimated to His Majesty their intention to join the Federation.[2]

These two conditions are intended to secure that the Federation is not brought into existence with only an insignificant number of States. The first condition, if it had stood by itself, would have been fulfilled if nine or ten of the major States in order of population like Hyderabad, Mysore, Travancore, and Baroda had proposed to join the Federation and the smaller States were totally left out. But the

[1] *Government of India Act*, sect. 5 (1). [2] Ibid., sect. 5 (2).

fulfilment of the second condition requires the accession of even the smaller States, as the distribution of seats to the States in the Upper Chamber proceeds not on the basis of population, but on the rank of the State as indicated by the salute list. The combination of the two conditions ensures that the Federation brought into existence is 'an effective' one containing a substantial number of both the major and minor States.

The process by which a federal union is to be brought about between two classes of units differing so widely in their legal and political status as the British Provinces and the States involves issues of great complexity. In ordinary circumstances where a number of independent political units desire to federate, they determine by mutual negotiations the form of the constitution which they desire to establish, and the constitution itself is generally the result of a pact concluded between the federating units, by which each agrees to surrender to the central authority, which their pact creates, an identical range of powers to be exercised by it on their behalf. Thus the form of the constitution of the United States was settled at the Philadelphia Convention by delegates representing the thirteen confederate States, and the Constitution came into effect after the draft was submitted to conventions of the several States and ratified by nine States as provided in its last article. The constitution of Imperial Germany was the result of a treaty of 'eternal alliance' concluded among the rulers of Bavaria, Würtemburg, Baden, Hesse and Prussia on behalf of the North German Confederation. Where the federating units are subject to the British Crown, as for example, Canada and Australia, the constitution has necessarily been clothed in the form of an Act of Parliament, as only an Imperial statute could give it a legal reality throughout the new federation. But in the peculiar circumstances obtaining in India neither a federal pact nor an Act of Parliament was by itself suffi-

cient to bring about an All-India Federation. A federal pact between the Provinces and the States was out of the question as British India had been hitherto a unitary state, and the Provinces, which were nothing more than administrative divisions, had no original or independent authority to surrender; and they could not moreover federate unless they were enabled to do so by an Act of Parliament. But an Imperial statute could bring into existence only a federation of Provinces, for it could not apply to the States, which, though they are under the suzerainty of the King-Emperor, form no part of His Majesty's dominions.

To meet these difficulties a procedure partaking of both the above methods has been adopted. The constitution of the Federation of India is embodied in the Government of India Act, an Imperial statute, this being the only way of making it binding on the Provinces. The powers, jurisdiction, and authority of the Crown in and over the territories of British India are redistributed under the Act on a federal basis between the Central Government and the Provinces. The Act provides also the machinery whereby a State may join the Federation. It cannot by itself make a State a member of the Federation, nor compel a ruler to join the Federation against his will. After judging for himself the nature of the All-India Federation as presented in the Government of India Act, and taking into account the legal consequences flowing from his accession to the Federation, the ruler of a State may either elect to join the Federation by making use of the machinery provided in the Act, or, if he prefers to remain in isolation, he may stand out of the Federation altogether. If he desires to federate, he is required to inform the Crown of his intention to do so by executing what may be regarded as a federal pact, called an Instrument of Accession, as required by the Act, transferring to the Crown, for purposes of the Federation, the necessary powers in relation to his State. On the acceptance of this

document by the Crown, the accession of the State shall become complete and the State shall be deemed to have become a part of the Federation.[1]

As under this procedure each State should effect its entry into the Federation only by means of an Instrument, it necessarily follows that there will be a multiplicity of these documents, in fact, as many as there are Federated States. The Joint Parliamentary Committee apprehended that this might lead to unfortunate results if the expressions and phraseology used in the several Instruments were to differ from each other, and they considered it very desirable that the Instruments should in all cases be in the same form.[2]

A standard form of Instrument was accordingly drafted by the British Government and recently sent to all the States for an expression of their views on the draft. Further, officers having special knowledge of the subject were deputed to the States to assist them on points of doubt and difficulty arising under the Act and the Instrument. In view of the great importance of this document, a series of meetings of the Chamber of Princes, the Committee of Ministers, and regional groups of States were convened to consider the draft, and as a result of their deliberations certain amendments and additional clauses to the draft have been suggested for the consideration of His Majesty's Government.

The Instrument contains several general clauses, including the declarations, which a ruler is required to make under the Act, which will be uniform for all States. By his Instrument the ruler will:

(*a*) declare that he accedes to the Federation as established under the Act, with the intent that His Majesty the King, the Governor-General of India, the Federal Legislature, the Federal Court and any other Federal authority established for the purposes of the Federation shall, by virtue of his

[1] *Government of India Act*, sect. 6 (1), (2), and (4).
[2] *Report of the Joint Parliamentary Committee on Indian Constitutional Reform*, para. 156.

Instrument, but subject always to its terms, and for the purposes only of the Federation, exercise in relation to his State such functions as may be vested in them by the Act; and

(*b*) assumes the obligation of ensuring that due effect is given within his State to the provisions of the Act so far as they are applicable therein by virtue of his Instrument.[1]

It is important to note here that a ruler is required under his Instrument to declare that he accedes to 'the Federation as established under the Act' thereby accepting the constitution as embodied in the Act as a whole. It is not open to him to accept some part of the constitution to the exclusion of others by making reservations in respect of any sections of the Act, unless such reservations are permitted by the Act itself. He cannot, for instance, restrict the jurisdiction of the Federal Court in relation to his State by inserting appropriate reservations under those sections of the Act which confer such jurisdiction. This point was placed beyond all dispute in the course of the prolonged controversy which took place between the States and His Majesty's Government during the passage of the Government of India Bill in the House of Commons. The States contended that a State should be free to select for itself such of the sections of the Act as were to be applicable to it and specify them in its Instrument. But the Secretary of State for India pointed out that it was impossible to accept this suggestion as it would result in every ruler who acceded to the Federation selecting different provisions of the Act as the basis of the constitution for his State, with the result that there might be a multiplicity of constitutions operating in different parts of India.[2] Adverting to the same subject, the Attorney-General, Sir Thomas Inskip, observed in the course of the debate on the Government of India Bill in the House of Commons: 'The House will realize that there is no idea of

[1] Instrument of Accession, arts. 1 and 2.

[2] *House of Commons Debates*, 26 February 1935, p. 984.

the States, by their Instruments of Accession and their right to except certain federal powers as applied to them, having the right to modify the Bill, that is to say, accept a different Bill from that which Parliament passes. I have desired to make it perfectly plain that the States will not be able to modify any provisions of the Bill except in relation to specified matters . . . but apart from some express provisions in the Bill empowering them to modify or except parts of the Bill they must accept the Bill as it is.'[1] In the Memorandum which accompanied the Secretary of State's telegraphic dispatch of 14 March 1935 to the Government of India, His Majesty's Government gave it as their final opinion that they considered it essential that there should be a single constitution and that the federating States should accept it as a whole. In two matters the Act permits a ruler to make reservations limiting the general application of the constitution to his State. The first is with regard to the administration of federal laws in a State. The Act allows a ruler to make provision in his Instrument of Accession for an agreement for the administration of federal laws in his State by State authorities.[2] If no such provision is made in the Instrument the administrative powers of the Federal Executive as laid down in the Act would apply in their entirety to the State. The second is with regard to interference with water supplies. The Act prescribes a special procedure for the determination of disputes which might arise between the units with regard to interference with water supplies. A ruler may, if he so desires, make a declaration in his Instrument that this procedure should not be applicable to his State.[3]

With the exception of the sections relating to these two matters in respect of which the Act itself authorizes a ruler to modify the Act, the constitution has to be accepted by

[1] *House of Commons Debates*, 23 May 1935, p. 615.
[2] *Government of India Act*, sect. 125. [3] Ibid., sect. 134.

him as a whole without any reference to particular sections of the Act.

The States, however, are given some freedom in the selection of the subjects which they are to transfer to the Federation. They had made it clear at the very outset of the discussions at the Round Table Conference that they were not prepared to transfer the same range of authority as the Federation might be empowered to exercise in a Province, and that, even as regards the subjects which they might be asked to accept as federal, they should be free to make such limitations as might appear to them to be necessary for safeguarding their existing rights. Both these points have been conceded to some extent by His Majesty's Government. A list of matters on which the Federal Legislature is empowered to make laws is given in List I of the Seventh Schedule to the Act. It contains 59 items and the States are invited to accept not all of them, but only the first 47. The remaining 12 items are subjects which concern the Provinces rather than the States, and they need not, therefore, be accepted by the States. As regards the 47 items, the ruler of a State is required, in a schedule to his Instrument, to specify which of them he accepts as matters with respect to which the Federal Legislature may make laws for his State, and the limitations, if any, to which the legislative and executive authority of the Federation is to be subject in respect of any item.[1] But this freedom must be exercised within narrow limits. If either the number of subjects proposed to be accepted by a ruler or the limitations suggested by him appear to His Majesty to be inconsistent with the scheme of Federation embodied in the Act, he may deny to the ruler admission into the Federation by refusing to accept his Instrument.[2] The concession thus shown to the States, however limited it may be in its scope, results in introducing a very anomalous feature into the Indian Federation, differentiating it from

[1] *Government of India Act*, sect. 6 (2). [2] Ibid., sect. 6 (4).

other federations. In all federal constitutions the range of authority exercisable by the central government is identical in all the units. But in the Indian Federation it differs not merely as between the two classes of units, the Provinces and the States, but even among the States themselves it varies according to the number of subjects accepted by individual States and the limitations made by them in respect of those subjects. The Federation of India approximates in this matter to the type of federation represented by the old German Empire where there prevailed marked inequality among the federating units.

A prolonged controversy took place between the States and His Majesty's Government as to what the nature and contents of the Instruments of Accession should be. The Chamber of Princes declared one of their essential conditions to be that the States would enter the Federation by means of treaties made with the Crown for the purpose. And, again, during the passage of the Government of India Bill in the House of Commons, the Princes strongly urged that the Instruments should be bilateral in character and in the form of treaties creating rights and imposing obligations both on the rulers of the States and on the Crown. This suggestion derived some support from the discussions at the Round Table Conference and the Halifax Committee, where the terms 'Treaties of Accession' and 'Treaties of Adhesion' were used indiscriminately to designate the pact by which the States were to effect their entry into the Federation. The suggestion, however, was brushed aside by His Majesty's Government and the use of the word 'Treaty' has been scrupulously avoided in the Act. The Instrument is bilateral in character, as His Majesty, by accepting it, may be said to become a party to it, but it does not on that account become a treaty between the State and the Crown. A treaty is generally terminated by efflux of time or by mutual consent or by a vital change of circumstances, but the Instrument

will continue to be valid so long as the Federation established by the Act endures. The Instrument is a source of federal constitutional law defining the field within which the Federation may exercise its powers in the State, all courts being bound to take judicial notice of it.[1] The Act lays down in general what powers and functions may be exercised by Federal authorities, but the matters in respect of which alone such functions may be exercised in any State are specified in the Instrument of Accession of that State. If any question arises as to whether the Federation may exercise its powers in respect of any matter in a State, the Instrument of Accession of that State will have to be read along with the Act to find out if that matter has been accepted by the State under its Instrument. In cases of conflict between the Act and the Instrument the latter prevails. This is made clear by the Act which expressly provides that 'the provisions of the Act shall in relation to the State, have effect subject to the provisions of the Instrument'.[2]

The Instrument is thus made the overriding document and the application of the Act to a State is limited to those provisions of the Act which become applicable to it by virtue of its Instrument. Thus if a State has not accepted corporation tax, which is item 46 of the Federal Legislative List, as a federal subject, section 139 of the Act, which empowers the Federal Legislature to levy and collect a corporation tax from Federated States, would not be applicable to the State, and no such tax could be levied in that State though it might be imposed on the Provinces and those States which have accepted the item. Similarly, several sections of the Act confer powers on the Federal Legislature to deal with items 47 to 59 of the Federal Legislative List which the States are not invited to accept. Section 215 of the Act, for instance, which corresponds to item 53, empowers the Federal Legisla-

[1] *Government of India Act*, sect. 6 (9). [2] Ibid., sect. 6 (4).

ture to make laws conferring supplementary powers on the Federal court to enable it more effectively to exercise its jurisdiction. Similarly, section 137, which corresponds to items 56 and 57, authorizes the Federal Legislature to levy succession and stamp duties and distribute the proceeds to the Provinces. But as none of these items is to be accepted by the States, these sections will not be applicable to them. It is only those sections of the Act which are related to the items of the Federal Legislative List accepted by a State in its Instrument that become applicable to it. Where a State feels aggrieved that the Federal Legislature is making laws for it on any matter not accepted by it, the validity of such legislation may be challenged by it in the Federal Court which is empowered to entertain and decide disputes arising under the Act and the Instrument between the States and the Federation.[1] If the subject matter of legislation does not relate to any of the items specified in the Instrument, it will be declared by the Court to be *ultra vires* and not applicable to the State, though the Act may confer powers on the Federal Legislature to make such laws for the Provinces and those States which have accepted the item.

The States entertain apprehensions, however, that the Federal Court may not put such a construction on the Act and the Instrument, but apply to them even those sections of the Act which are not linked to the items specified in their Instruments of Accession on the ground that such sections are tacitly accepted by the States. The consequences of such a wide construction would reduce the States to the level of the British Provinces. The Act no doubt provides that its application to a State should be limited by the provisions of the Instrument of Accession of that State, and further precludes the Federal Legislature from making laws for a State otherwise than in accordance with its Instrument of Accession.[2] But it is said that these provisions simply refer one

[1] *Government of India Act*, sect. 204. [2] Ibid., sect. 101.

back to the Instrument and if there is any room for doubt under the Instrument the Act does not dispel it. The possibility of doubt in the Instrument arises from the fact that by clause 1 of the Instrument a State 'accedes to the Federation as established under the Act' and 'authorizes the Federal Legislature to exercise in relation to this State such functions as may be vested in it by the Act'. It is urged that *prima facie* the words 'such functions as may be vested in them by the Act' would include all powers which the Federal Legislature is empowered to exercise under any section of the Act.[1] To preclude the Federal Court from pursuing such a line of reasoning and to prevent the possibility of a wider construction being placed on the Act and the Instrument, the Chamber of Princes and the Committee of Ministers have suggested that an additional clause should be added to the draft Instrument to the effect that the Federal Legislature should not have power to make laws for a State except on matters specified in the Instrument. The clause does no more than give expression to the underlying intention of the Act that the powers of the Federation should not extend beyond the field accepted by the State in its Instrument of Accession. Its inclusion in the Instrument will reassure the Princes by clarifying the position and removing all doubts in the matter.

With the inclusion of this clause the federal field for each State will be defined with absolute precision in terms of the items of the Federal Legislative List specified by it in its Instrument. On all matters falling outside the items so specified, the ruler reserves to himself his inherent powers of sovereignty. This principle is well recognized in the Instrument and one of its clauses expressly provides that nothing contained in the Instrument affects the continuance of the sovereignty of the ruler in and over his State or, save as provided by the Instrument or by any law of the Federal Legis-

[1] *Report of the Constitutional Committee of the Chamber of Princes*, para. 9.

lature made in accordance with the terms thereof, the exercise of any of his powers, authority, and rights in and over his State.[1] Within this reserved field the Federation has no right to interfere either directly or indirectly, and any attempt by it to do so would be declared *ultra vires* by the Federal Court. A ruler may extend the scope of Federal authority in his State by divesting himself of some of the powers reserved by him and transferring them to the federal field. He may at any time execute a supplementary Instrument extending the functions of any Federal authority in his State.[2] Such extension may be effected either by the removal of conditions and limitations stipulated in the original Instrument or by the transfer of some more subjects to the Federation. The Secretary of State for India was at one time of opinion that if a power once transferred by a State was found to work inconveniently it should be restored to the State.[3] But the Act makes the path smooth for a further extension of Federal authority in a State, but contains no provision for resumption by a State of what has been surrendered by it under its original Instrument.

The Princes felt nervous that the constitutional machinery to which they acceded might in future be changed by Parliament without any reference to them, and to be guarded against such an eventuality, the Chamber of Princes proposed as an important condition of the accession of the States to the Federation that the Constitution should not be changed without the consent of the States. An attempt has been made to meet the wishes of the Princes in this matter by placing some restriction on the power of Parliament to carry out amendments to the Act. The provisions of the Act have been sorted out into those which exclusively affect British India and are of no concern to the States, and those

[1] Draft Instrument of Accession, clause 13.
[2] *Government of India Act*, sect. 6 (3).
[3] *Minutes of Evidence taken before the Joint Parliamentary Committee on Indian Constitutional Reform*, Question 6756.

relating to the Federal Constitution as such in which the States are as much interested as the Provinces. The former are mentioned in the second schedule to the Act and may be freely amended by Parliament without any reference to the States. But the provisions of the latter class are protected provisions and cannot be amended without 'affecting' the accession of the States.[1] They could be amended without affecting the accession of the States, only when the States themselves consent to such amendments. The States are thus given a veto on every amendment and none of the disagreeable features of the Federal Constitution to which public opinion in British India has taken strong exception can be removed without the consent of all the States. Thus any change with regard to the special responsibilities of the Governor-General or his position towards issues of external affairs and defence requires the approval of all the Princes. This seems to make the Constitution so rigid as to be incapable of any change, for it is quite impossible to secure unanimity among several hundred State-members of the Federation. Any amendment may be held up by the refusal of even a single State to consent to it. It was suggested during the debates in Parliament that it should at least be made possible to carry out such amendments as were supported by a majority of States, but the suggestion was not accepted by His Majesty's Government.

The provision, however, affords little protection to the States against amendments being made to the Act by Parliament without their consent. It is a limitation imposed by Parliament on its own competence, and Parliament is free to repeal this self-imposed limitation at any time and substitute a different procedure as to the manner of carrying out amendments to the Act. Nothing is more certain than that one Parliament cannot so bind its successors, by the terms of any statute, as to limit the discretion of a future Parlia-

[1] *Government of India Act*, sect. 6 (5).

ment, and thereby disable its freedom of action at any time. Blackstone writes: 'Acts of parliament derogatory from the power of subsequent parliaments bind not. . . . Because the legislature, being in truth the sovereign power, is always of equal, always of absolute authority; it acknowledges no superior upon earth, which the prior legislature must have been, if its ordinances could bind a subsequent parliament. And upon the same principle Cicero, in his letters to Atticus, treats with a proper contempt those restraining clauses, which endeavour to tie up the hands of succeeding legislatures. "When you repeal the law itself," says he, "you at the same time repeal the prohibitory clause, which guards against such repeal."' The principle that one Parliament cannot bind its successors though occasionally an attempt is made to do so, is abundantly illustrated by Dicey in his classical work. He gives as illustrations the disestablishment of the Irish Church (a direct contravention of the Act of Union); the Septennial Act, 1716, whereby Parliament extended its life from three to seven years, and he also points out that the Scotch Act of Union has been overridden. The provision does not bind the hands of Parliament to maintain the Constitution embodied in the Government of India Act without any change until such time as the Princes themselves ask for a change, or to carry out only such amendments as meet with their approval. It is unreasonable to expect that either British India or enlightened public opinion even in the States, which may reasonably be expected to ally itself with British-Indian opinion in this matter, is going to rest content with a Constitution which has been widely condemned as conferring dictatorial powers on the Governor-General. Parliament will be called upon in no distant future to carry out far-reaching changes in the Act. It would be ridiculous for a legislature like Parliament, which is 'omnipotent to change', to put off the demand for the constitutional progress of India on the plea that an Act

passed by it cannot be changed without the consent of the Indian Princes. Any amendments which may be made in compliance with such a demand will 'affect' the accession of the States, if such amendments do not meet with their approval. How far their accession would be 'affected' in such an event and with what consequences is considered in connexion with the question of the secession of the States from the Federation.

One of the immediate legal consequences of the accession of a State is that the powers of sovereignty now possessed by it will be greatly impaired and diminished beyond all redemption. The Chamber of Princes proposed, as an important condition of the entry of the States into the Federation, that the sovereignty and autonomy of the States should be fully respected and guaranteed and that there should be no interference direct or indirect with the internal affairs of the States. The observance of this condition is incompatible with the very conception of a federation which necessarily involves the surrender of some sovereign powers by the federating units to the central authority. It is impossible for a State to maintain its present powers intact and to join the Federation at the same time. The two are quite incompatible, and any State which joined the Federation must be prepared to undergo a diminution of its present powers not merely as the result of the original cession of powers made under the Instrument, but also as a result of the judicial construction which may be placed on the Instrument and which may quite conceivably enlarge the scope of the powers ceded under it.

The powers ceded by a State are surrendered by it for all time. Further additions may be made to them from time to time by supplementary Instruments, but there is no likelihood of a State ever resuming the powers surrendered by it and regaining its original status by withdrawing from the Federation. The right of a member of a federal union to

withdraw from the union was much discussed in the United States before the Civil War of 1862–5. The protagonists of the theory of 'State sovereignty' propounded the dangerous doctrine that a federal union was nothing more than a compact among the States, and that the States had severally the right to resist any breach of the compact by resistance, revolution, and bloodshed. Matters came to a head when the State of South Carolina passed an ordinance of secession and followed it up later by a declaration of independence, alleging that the union was dissolved and that the State had resumed her original status as a sovereign State. The example of South Carolina was followed by ten other States, which joined together to form a provisional government and began the Civil War. 'The trial of the wager of battle lasted more than five years. The dispute as to the construction of the constitution was too mighty to be decided in a court of justice. The South had appealed to the final argument; in imitation of the Gallic Brennus, she had thrown her sword into the scale. To her surprise the North, less timid than the Romans, followed her example, and the weapon of the latter proved the heavier. The result determined the character of the constitution for all time and compelled the conquered to consent to amendments which eradicated the evil (slavery) that had been the cause of the fraternal discord. No amendment which disclaimed the right of secession was written into the great charter; pen and ink were not needed to express what had been stamped upon it by blood.'[1] It was thus at a great cost that the principle that the United States formed a perpetual union of States was once and for all time placed beyond the region of doubt. The principle later received judicial recognition in the leading case of *Texas* v. *White* in which the Supreme Court laid down the doctrine that the United States were 'an indestructible union composed of indestructible States'.

[1] Foster, *Commentaries on the Constitution*, vol. i, p. 185.

The Commonwealth of Australia Act expressly affirms that the Federal Commonwealth is 'indissoluble'. The Government of India Act contains no such words, but all the same the Federation of India is as 'indissoluble' as the Australian Commonwealth and as 'indestructible' as the United States. Some of the Princes, who fondly cherished the hope that they could easily get in and walk out of the Federation at their pleasure sought to obtain an indication of the views of the Secretary of State for India on this matter during his examination before the Joint Parliamentary Committee. In reply to questions put to him by Sir Prabhashankar Pattani, he explicitly stated that the Federation when brought into being would be perpetual and indissoluble; that it would be fatal to the Federation if either the States or the Provinces came in and went out and then wished to come in again, and that he did not believe that any system of Government could continue on that sort of principle.[1]

The Act does not confer on the States the right of secession and the phraseology used both in the Act and in the preamble of the Instrument of Accession also indicates that the Federation to which a ruler accedes is of a permanent character. The Act provides that the Royal Proclamation, establishing the Federation, shall declare that from a day appointed therein the Provinces and the acceding Indian States 'shall be united' in a Federation under the Crown. Similarly the Instrument expressly recites that the ruler of a State joins the Federation for the purpose of co-operating in the furtherance of the interests and welfare of India 'by uniting in a Federation under the Crown', by the name of the Federation of India, with the Provinces and the rulers of other States. The word 'uniting' is significant; it implies an organic union and negatives the contention that the Federation is a mere partnership between the Provinces and the

[1] *Minutes of evidence taken before the Joint Parliamentary Committee on Indian Constitutional Reform*, Question 7843.

States from which a ruler may at any time withdraw at his pleasure. The word is further identical with that used in the Constitution Acts of Canada and Australia, and when taken as an expression of Parliament's intention indicates that the Indian Federation is as permanent a union as that of Canada or Australia.

The Act seems to contemplate certain circumstances under which the States may claim to withdraw from the Federation. As pointed out earlier, none of the protected provisions can be amended without 'affecting' the accession of the States. It is but reasonable to assume that before such amendments are carried out the States would be consulted and their wishes ascertained. It may well be that a conference of representatives of British India and the States may be called for the purpose of advising on the matter, and the amendments proposed may seek to give effect to the largest measure of agreement reached at the conference. But there will be, and there are bound to be, a minority of States, or even a majority, perhaps, which may disagree on the point. They may refuse to give their consent to the amendments proposed and their accession would therefore be 'affected'. The Act does not give the meaning of the word 'affected' nor indicate what is to happen to States whose accession is thus 'affected'. Nowhere is it laid down that such States should *ipso facto* be regarded as ceasing to be members of the Federation. The position arising in the event of an amendment being made by Parliament without the consent of the States was thus explained by the Secretary of State for India: 'If you amended the parts of the Bill which affect the States, obviously you would be altering the conditions on which they have acceded, and that would certainly create a situation in which the Princes could rightly claim that their Instruments of Accession had been altered.'[1] The Attorney-General, Sir Thomas Inskip, said: 'Any amendment of a

[1] *House of Commons Debates*, 27 February 1935, p. 1207.

protected provision will give a State the right to reconsider its position, because the Instrument of Accession was made upon a certain basis and an amendment or an alteration of a protected provision has changed that basis.'[1] The position was further explained by the Solicitor-General, Sir Donald Somervell, as follows: 'If in the amendment which Parliament makes it alters the protective provisions which affect the States then their Instruments of Accession are voided. They need not go out automatically, but they have a right to say, "This is a different Federation." Negotiations will take place, but in the last resort they have the right to say, "In spite of your negotiations this is not the Federation which we joined and therefore our accession is no longer a valid Instrument."'[2]

No legal or judicial machinery is provided in the Act by which this claim could be prosecuted by the States. It is left to be determined by negotiation between the State and the Crown. The ruler of a State will have to appear perhaps as a suppliant before the Crown praying to be released from the federal tie on the ground that the basis of the constitution to which he originally adhered had been changed to his prejudice without his consent. British constitutional precedents, however, do not encourage one in the hope that such prayers would be granted. The Province of Nova Scotia was impelled by the British Government to join the Canadian Federation, and Parliament turned a deaf ear to its appeal for release, though made immediately after federation and supported by the almost unanimous voice of the electorate. The petition of Western Australia for secession from the Australian Commonwealth recently received the same treatment at the hands of Parliament, though it had the support of the majority of the voters of Western Australia. The chances of an Indian ruler unsupported by his subjects, and

[1] *House of Commons Debates*, 23 May 1935, p. 615.
[2] Ibid., 27 May 1935, p. 794.

acting sometimes in opposition to their wishes and interests, succeeding where Nova Scotia and Western Australia failed in their attempts are, it is needless to add, very remote.

A ruler has no alternative but to give his unqualified consent to every amendment that may be made to the constitution. If he does not gracefully and of his own accord do so, the Crown, as the Paramount Power, will necessarily have to interfere and use its 'good offices' and 'advise' him to accept the amendment. For, otherwise, there would be two different federations—one as embodied in the original Act for the ruler who has not accepted the amendment, and another for the rest of India as laid down in the amended Act. Such an anomalous position at all events cannot be permitted to exist, and the Paramount Power would certainly intervene to bring the State into line with the rest of the Federation, whatever form such intervention might take and however odious it might be to the ruler concerned. Those Princes who still cherish the idea that the Act gives them a claim to withdraw under certain circumstances which they could successfully pursue will do well to ponder over this aspect of their entry into the Federation. The step that they are taking is irrevocable, and when once they have joined the Federation, they cannot withdraw from it on the score of amendments being made to the Act without their consent, but will have to give their 'voluntary' assent even to the most far-reaching changes that may be made in the constitution.

Another consequence of the accession of a State is that federal laws on all matters accepted by the State under its Instrument will become applicable to it, and its subjects are bound to obey them. This is one of the main characteristics which distinguish a federation from a confederation. In the latter the central authority possesses no power of enforcing its decrees in the territories of the confederate States, while a federal government can compel obedience to

its laws by enforcing them directly on the people of the units. The Federation of India is an organic federal union of States and Provinces in which the enactments of the Federal Legislature acting within the scope of its authority operate alike in the Provinces and the States. The power to legislate granted under the Instrument is a power to make laws for the subjects of a State who are as much and as directly subject to federal legislation as His Majesty's subjects in the Provinces. Their rights and duties within the federal sphere are established by federal laws which are administered either directly by organs set up for the purpose by the Federal Government or by State authorities in subordination to the Federal Government. Federal laws bind State subjects not merely within the State itself, but wherever they may be.[1] If, for instance, a State accepts maritime shipping and navigation as a federal subject and the Federal Legislature passes a law punishing offences against the discipline of ships registered in India, the subject of the State would be liable to punishment though the offence charged against him was committed outside Indian territorial waters. The subjects of a State, who at present owe allegiance only to their ruler, will, after the accession of a State, owe allegiance to both the ruler and the Federation. Each has a right to command their obedience and where a State law conflicts with a federal law they are bound to obey the federal law.[2] The States' subjects are not now regarded as British subjects, but on coming under the Federation of which the Crown is the head, it may be said that they have become British subjects.

In the earlier stages of the discussions at the Round Table Conference some of the rulers contended that federal legislation should not apply *proprio vigore* to the States, although such a contention was wholly inconsistent with their declaration to join the Federation. The Chamber of Princes pro-

[1] *Government of India Act*, sect. 99 (2) (d). [2] Ibid., sect. 107 (3).

posed that federal laws should operate in the States after they were re-enacted and proclaimed by the respective rulers under their own authority. This proposal was sponsored in the Federal Structure Committee by His Highness the Maharaja of Bikanir, and Sir Prabhashankar Pattani in explaining the attitude of the States observed: 'Whenever a law with regard to any matter is passed, and the States adopt it as their own legislation, and work on the same system, would there be any objection to that?'[1] It was pointed out by Sir Tej Bahadur Sapru that this was no federation at all, and that in a real and genuine federation it was the Federal Legislature that passed the law which operated alike both in the Provinces and the States, and that the States could not claim that they should 'as a matter of courtesy pass the same legislation' to make it operative in their territories.[2] The proposal was opposed by the other members of the British-Indian delegation and the representative of Mysore and did not find the least favour with the Committee. Nevertheless the Princes clung to it tenaciously as 'an essential safeguard' and pressed it off and on until the matter was set at rest by the Government of India Act. It was well that it was rejected, for acceptance would have retarded the progress of the country towards a greater union between 'the two Indias' by bringing into existence a loose confederation where the laws of the central authority would have depended for their operation on the vigilance and goodwill of the rulers to accept and apply them to their States.

Another result of the accession of the States to the Federation is that they become subordinate to two independent authorities, viz. the British Crown, as the Paramount Power, and the Federation. The States are already subordinate to the Crown which, as their Suzerain, exercises varying

[1] *Report of the Committee of the First Federal Structure Committee*, p. 219.
[2] Ibid.

degrees of control over individual States as sanctioned by treaties, grants, usage or sufferance. Paramountcy is now exercised on behalf of the Crown by the Governor-General under the general control of the Secretary of State for India. It does not lapse as a result of the accession of the States to the Federation, but will continue to be exercisable by the Crown though not to the same extent as before, for, as will be shown hereafter, some of its powers will be transferred to the Federation as a result of such accession. The States become subordinate at the same time to the Federation which claims their full obedience in all matters surrendered by them under their Instruments. The nature and extent of such subordination is considered in later chapters, and it is sufficient to mention here certain outstanding instances. In the sphere of legislation, federal laws claim precedence over State laws and override them in cases of conflict. State administration even in the non-federal sphere has to be carried on in such a manner as not to impede or prejudice the administration of federal laws. The State judiciary will in some respects become subordinate to the Federal Court.

Some of the matters on which the Crown now exercises some sort of control in the States are included in the list of federal subjects which the States are asked to accept. The most obvious instances are salt and opium. The Crown has acquired under agreements with many States certain rights in respect of the manufacture of salt and opium; when the items of salt and opium in the Federal Legislative List are specified by a State in its Instrument as matters with respect to which the Federal Legislature may make laws for the State, the subject matter of the items will fall within the jurisdiction of Federal authorities and will be dealt with by the Federation in its relations with the State as a member of the Federation. If the Crown does not relinquish its powers over such matters as are transferred to the Federation, but continues to exercise them along with the Federation, the

States will be placed in the most embarrassing position of being obliged to serve two masters at the same time and in respect of the same matter. The Act recognizes the difficulties arising from such a situation and makes some provision against it.

The jurisdiction of the Federation is made exclusive in all federal matters, and all possibility of the Crown exercising any of its powers over such matters is avoided. Section 294 (2) of the Act provides that if, after the accession of a State to the Federation becomes effective, any powers or jurisdiction with respect to any matter is, by virtue of the Instrument of Accession of the State, exercisable in the State by the Federation, the Federal Legislature, the Federal Court and the Federal Railway Authority, then any power formerly exercisable by the Crown by virtue of its paramountcy in the State shall not be exercisable in the State in respect of that matter. As a result of this provision all paramountcy powers will, when a State joins the Federation, automatically terminate in regard to all those matters for which the State has federated. If, for example, a State has accepted all the forty-seven items of the Federal Legislative List, the powers of the Crown, whatever their nature and extent, in regard to those items are brought to an end. The subject-matters of those items fall within the federal field and will be dealt with exclusively by the Federation, and the Crown has no right to exercise any powers over them on the score that it was exercising such powers before the State acceded to the Federation.

The powers of the Crown falling outside the federal field do not abate in the same manner but will continue to be exercisable by it as before. The rights and obligations of the Crown in relation to any State in the non-federal sphere are expressly recognized by the Act as remaining unaffected by federation.[1] Neither the Federation nor any Federal

[1] *Government of India Act*, sect. 285.

authority has anything to do with such rights and obligations which are quite distinct and separate from the relations of the States with the Federation as constituent members. The functions of the Crown as Paramount Power are as exclusive as the functions of the Federation within the federal field. To carry on such functions of paramountcy, a separate office, known as 'the Crown' Representative, is constituted by Letters Patent, and the person appointed to the office will exercise such functions as may be delegated to him by the Crown.[1]

By thus carrying out a division of the functions of the Crown and the Federation in their relations with the States and by making them mutually exclusive, the Act provides against the possibility of a concurrent jurisdiction being exercised in the States by both the Crown and the Federation in respect of the same matter. The respective spheres of activity of the two authorities to which the States are subordinate are well demarcated and neither of them has any right to interfere in the domains of the other. But the Committee of Ministers and the Chamber of Princes are of opinion that this demarcation is not fully carried out in the Act, and that it is still possible for both the Crown and the Federation to exercise a concurrent authority and thus subject the States to a double jurisdiction. To remedy this defect they have suggested that two new clauses should be added to the draft Instrument to the effect that none but Federal authorities should exercise any functions in the federal field and that no Federal authority should have any jurisdiction with respect to the rights and obligations of the Paramount Power. The inclusion of these two clauses presents no difficulty as they do not offend against the principle enunciated by the Secretary of State for India that nothing should be inserted in the Instrument which modified any of the provisions of the Act. The clauses do not seek to modify the Act, but they bring

[1] *Government of India Act*, sect. 3 (2).

out clearly the underlying principle of the Act, viz. that none but the Federal authorities should perform federal functions and that Federal authorities should not interfere in the sphere of paramountcy, in regard to which, according to the opinion of the Committee of Ministers and the Chamber of Princes, the Act has failed to give full effect.

CHAPTER III

FEDERAL SUBJECTS

THE subjects on which the Federal Legislature may make laws are enumerated in List I of the Seventh Schedule to the Act. The States' representatives had devoted several days at the first Round Table Conference to a discussion of the subjects which they were prepared to accept as federal and had strongly urged that the list should be limited to a few matters of All-India concern. Though the main principles followed in the discussion were kept in view in framing the list, many new subjects have been added on to it; it now contains 59 items, many containing several sub-items, and States are invited to accept the first 47 and items 53 and 59, all of which are regarded as matters of All-India concern. These are:

1. His Majesty's naval, military, and air forces borne on the Indian establishment and any other armed force raised in India by the Crown, not being forces raised for employment in Indian States or military or armed police maintained by Provincial Governments; any armed forces which are not forces of His Majesty, but are attached to or operating with any of His Majesty's naval, military, or air forces borne on the Indian establishment; central intelligence bureau; preventive detention in British India for reasons of State connected with defence, external affairs, or the discharge of the functions of the Crown in its relations with Indian States.

2. Naval, military, and air force works; local self-government in cantonment areas (not being cantonment areas of Indian State troops), the regulation of house accommodation

in such areas, and, within British India, the delimitation of such areas.

3. External affairs; the implementing of treaties and agreements with other countries; extradition, including the surrender of criminals and accused persons to parts of His Majesty's dominions outside India.

4. Ecclesiastical affairs, including European cemeteries.

5. Currency, coinage, and legal tender.

6. Public debt of the Federation.

7. Posts and telegraphs, including telephones, wireless, broadcasting, and other like forms of communication; Post Office Savings Bank.

8. Federal public services and Federal Public Service Commission.

9. Federal pensions, that is to say, pensions payable by the Federation or out of Federal revenues.

10. Works, lands and buildings vested in, or in the possession of, His Majesty for the purposes of the Federation (not being naval, military, or air force works), but, as regards property situate in a Province, subject always to Provincial legislation, save in so far as Federal law otherwise provides, and, as regards property in a Federated State held by virtue of any lease or agreement with that State, subject to the terms of that lease or agreement.

11. The Imperial Library, the Indian Museum, the Imperial War Museum, the Victoria Memorial, and any similar institution controlled or financed by the Federation.

12. Federal agencies and institutes for the following purposes, that is to say, for research, for professional or technical training, or for the promotion of special studies.

13. The Benares Hindu University and the Aligarh Muslim University.

14. The Survey of India, the Geological, Botanical and Zoological Surveys of India; Federal meteorological organizations.

15. Ancient and historical monuments; archaeological sites and remains.

16. Census.

17. Admission into, and emigration and expulsion from, India, including in relation thereto the regulation of the movements in India of persons who are not British subjects domiciled in India, subjects of any Federated State, or British subjects domiciled in the United Kingdom; pilgrimages to places beyond India.

18. Port quarantine; seamen's and marine hospitals, and hospitals connected with port quarantine.

19. Import and export across customs frontiers as defined by the Federal Government.

20. Federal railways; the regulation of all railways other than minor railways in respect of safety, maximum and minimum rates and fares, station and service terminal charges, interchange of traffic and the responsibility of the administrations of such railways as carriers of goods and passengers.

21. Maritime shipping and navigation including shipping and navigation on tidal waters; Admiralty jurisdiction.

22. Major ports, that is to say, the declaration and delimitation of such ports, and the constitution and powers of port authorities therein.

23. Fishing and fisheries beyond territorial waters.

24. Aircraft and air navigation; the provision of aerodromes; regulation and organization of air traffic and of aerodromes.

25. Lighthouses, including lightships, beacons, and other provision for the safety of shipping and aircraft.

26. Carriage of passengers and goods by sea or by air.

27. Copyright, inventions, designs, trademarks, and merchandise marks.

28. Cheques, bills of exchange, promissory notes, and other like instruments.

29. Arms; firearms; ammunition.

30. Explosives.

31. Opium, so far as regards cultivation and manufacture, or sale for export.

32. Petroleum and other liquids and substances declared by Federal law to be dangerously inflammable, so far as regards possession, storage, and transport.

33. Corporations, that is to say, the incorporation, regulation, and winding-up of trading corporations, including banking, insurance, and financial corporations owned or controlled by a Federated State and carrying on business only within that State or co-operative societies, and of corporations, whether trading or not, with objects not confined to one unit.

34. Development of industries, where development under Federal control is declared by Federal law to be expedient in the public interest.

35. Regulation of labour and safety in mines and oilfields.

36. Regulation of mines and oilfields and mineral development to the extent to which such regulation and development under Federal control is declared by Federal law to be expedient in the public interest.

37. The law of insurance, except as respects insurance undertaken by a Federated State, and the regulation of the conduct of insurance business, except as respects business undertaken by a Federated State; Government insurance, except so far as undertaken by a Federated State, or, by virtue of any entry in the Provincial Legislative List or the Concurrent Legislative List, by a Province.

38. Banking, that is to say, the conduct of banking business by corporations other than corporations owned or controlled by a Federated State and carrying on business only within that State.

39. Extension of the powers and jurisdiction of members

of a police force belonging to any part of British India to any area in another Governor's Province or Chief Commissioner's Province, but not so as to enable the police of one part to exercise powers and jurisdiction elsewhere without the consent of the Government of the Province or the Chief Commissioner, as the case may be; extension of the powers and jurisdiction of members of a police force belonging to any unit to railway areas outside that unit.

40. Elections to the Federal Legislature, subject to the provisions of this Act and of any Order in Council made thereunder.

41. The salaries of the Federal Ministers, of the President and Vice-President of the Council of State and of the Speaker and Deputy Speaker of the Federal Assembly; the salaries, allowances and privileges of the members of the Federal Legislature; and, to such extent as expressly authorized by Part II of this Act, the punishment of persons who refuse to give evidence or produce documents before Committees of the Legislature.

42. Offences against laws with respect to any of the matters in this list.

43. Inquiries and statistics for the purpose of any of the matters in this list.

44. Duties of customs on tobacco and other goods manufactured or produced in India except:

(*a*) alcoholic liquors for human consumption;

(*b*) opium, Indian hemp and other narcotic drugs; non-narcotic drugs;

(*c*) medicinal and toilet preparations containing alcohol, or any substance included in sub-paragraph (*b*) of this entry.

46. Corporation tax.

47. Salt.

53. Jurisdiction and powers of all courts, except the Federal Court, with respect to any of the matters in this list

and, to such extent as is expressly authorized by Part IX of the Act, the enlargement of the appellate jurisdiction of the Federal Court, and the conferring thereon of supplemental powers.

59. Fees in respect of any of the matters in the list, but not including fees taken in any Court.

The list appears somewhat formidable at first sight, conveying the impression that the States are being asked to surrender their powers of legislation over a large number of subjects. But on closer examination it will be found that even if the States accepted all the 49 items they would not really be ceding any powers at all in respect of most of the items, for they do not possess any present powers of legislation or administration whatever in respect of them. None of the States possesses any powers on items 1. His Majesty's naval, military, and air forces; 2. Naval, military and air force works and cantonments; 3. External affairs; 4. Ecclesiastical affairs; 10. Works, lands, and buildings vested in His Majesty; 11. Imperial Library; 13. the Benares Hindu University and the Aligarh Muslim University; 14. Survey of India; 19. Import and export across customs frontiers as defined by the Federal Government; and 20. Federal railways, all of which are already being dealt with by the Government of India without any reference to the States which cannot, therefore, be said to make any cession of powers in respect of them.

The same may be said of items 6. Public debt of the Federation; 8. Federal Public Services; 9. Federal pensions; 12. Federal agencies and institutes for research; 40. Elections to the Federal Legislature; and 41. The salaries of the Federal Ministers and members of the Federal Legislature, which are quite new and relate to the administrative services and the organization of the Federal Government.

With the exception of a dozen maritime States, the remainder, by reason of their geographical position, have no

powers to cede on items 18. Port quarantine; 12. Maritime shipping and navigation; 22. Major ports; 23. Fishing; 25. Lighthouses; 26. Carriage of goods and passengers by sea; and 44. Duties of customs including export duties. As regards 7. Posts and telegraphs; 31. Opium; and 47. Salt, by far the large majority of the States have no coinage or postal systems of their own and are precluded by treaties and engagements from manufacturing salt and opium.

The acceptance of these twenty-seven items, so far from involving any surrender of legislative powers by the States, secures to them a voice, which they hitherto did not possess, in the shaping of the policy of the Central Government on the matters covered by those items. This is one of the advantages which the States stand to gain by accession to the Federation. The subjects on which the States possess present powers of legislation, and the acceptance of which involves a surrender of their legislative powers, are in all twenty-two in number, and they are items 15–17, 24, 27–30, 32–39, 42–4, 46, 53, and 59.

Items 1 to 47 and 53 represent the normal field which the States are expected to accept as federal. It is, moreover, obligatory on all the States to accept item 59, for it is but proper and legitimate that the Federal Government should have the power to levy fees in respect of any federal subject and appropriate the proceeds for its own purposes.

It has been recognized that some variations within the normal field may arise owing to the differing circumstances of the States and the different treaty rights which they may desire to preserve. Many of the States in Rajputana and Kathiawar, for example, are in possession of rights of a financial character guaranteed under treaties and engagements, which they may wish to preserve by making limitations in respect of items 44. Customs; 47. Salt. Similarly, the States which now run their own post offices may find it difficult to accept without qualifications item 7. Posts and

Telegraphs. Some of the items, moreover, are expressed in such wide and general terms that the need for narrowing their scope by suitable limitations is obvious. Thus the unqualified acceptance by a State of item 53 may have far-reaching consequences on the State. By exercising the powers conferred by this item, the Federal Legislature might very well deprive the State High Court of its appellate authority over the courts subordinate to it in all federal matters by vesting such authority in a court outside the State, or the ruler himself might be made amenable to the jurisdiction of his courts in federal matters.

The States are accordingly given some latitude both in the selection of the subjects and also the limitations which may be made in respect of any particular subject. The ruler of a State is required to specify in a schedule to his Instrument which of the 47 items he accepts as matters with respect to which the Federal Legislature may make laws for his State, and the limitations, if any, to which the power of the Federal Legislature to make laws for his State and the exercise of the executive authority of the Federation in his State are respectively to be subject.[1] The selection and the limitations proposed by the ruler must, however, be such as are acceptable to His Majesty, who may refuse to accept any Instrument if it appears to him that the terms contained in it are inconsistent with the scheme of federation embodied in the Act.[2]

The Committee of Ministers which met recently for considering the draft Instrument of Accession examined in great detail, with the help of expert legal advisers, the 49 items and the legal consequences following from the acceptance of each of them, and made suggestions with regard to the reservations and limitations which should be made by the States for safeguarding what they considered to be the rights and interests of the States. The Chamber of Princes also appointed

[1] *Government of India Act*, sect. 6 (2). [2] Ibid., sect. 6 (4).

a Committee, known as the Constitutional Committee, for the same purpose, under the presidentship of His late Highness the Maharaja of Patiala, which gave its whole-hearted support to the suggestions of the Committee of Ministers. The adoption of these suggestions is a matter which each State has to consider for itself in the light of its own circumstances.

It may be noted that in proposing reservations or limitations in respect of any item the rulers will have to give due weight to five considerations:

Firstly, the States are expected to transfer a sufficiently wide field of authority to the Federation by accepting as many items as possible so as to render their accession to the Federation really 'effective'. It is not open to a ruler to propose to accept twenty or thirty only of the 47 items, for there can be no question of any ruler acceding to the Federation under what Sir Samuel Hoare, the Secretary of State for India, humorously described as 'a kind of limited liability system'.[1] The test that will be applied in actual practice before an Instrument of Accession is accepted by His Majesty is whether the ruler is really surrendering a sufficiently effective part of his powers for the purposes of the Federation. If a ruler attempts to make reservations that would make the entry of his State of no value, His Majesty may refuse to accept an entry upon those terms.[2]

Secondly, no reservation which is inconsistent with the scheme of Federation embodied in the India Act is likely to be accepted by His Majesty. For instance, items 12. federal agencies and institutes for research, and 24. provision of aerodromes, carry with them the power to establish such institutes and aerodromes whenever and wherever it may be considered necessary and desirable by the Federal Government to do so and to acquire lands in any unit which may be required for the purpose. A limitation, which is

[1] *House of Commons Debates*, 27 February 1935, p. 1145.

[2] *Minutes of Evidence taken before the Joint Parliamentary Committee on Indian Constitutional Reform*, Question 6753 and 7836.

reported to have been suggested by the Conference of Princes, that no such institute or aerodrome should be established in a State without the previous consent of its ruler is clearly inconsistent with the scheme of Federation, for if in every case where the Federation desires to establish an aerodrome in a State it has to depend upon the ruler's consent, who is under no obligation to give it, the Federation will be incapable of carrying out the purposes for which it is established. But a limitation that lands situate in a State, when required for federal purposes, should be acquired in accordance with State laws and after payment of compensation is not inconsistent with the scheme of Federation. The Act itself provides for the payment of such compensation by the Federation when it acquires lands situate in a Province, but omits to make any provision for the acquisition of lands situate in the States.[1] A limitation on the same lines cures this omission and can by no means be regarded as inconsistent with the provisions of the Act.

Thirdly, any reservation which would have the effect of diminishing the extent of the powers already exercised by the Government of India in relation to a State in respect of any item will not be accepted. Thus the Government of India exercises certain powers in respect of coinage, currency, and post offices in many States under treaties and engagements. It is of course open to the ruler of the State concerned to make reservations intended to preserve the rights secured to his State under such treaties, but he cannot propose reservations which would have the effect of releasing him from the corresponding obligations by allowing him to revive his rights of independent coinage or to establish post offices of his own. Similarly, the Government of India now exercises an effective control over the import and export of arms in the States, and no limitation designed to diminish the extent of such control is ever likely to find acceptance

[1] *Government of India Act*, sect. 127.

with His Majesty. Such limitations cannot be allowed to be made by States, for the simple reason that they tend to break up the unity which has so far been achieved in India.

Fourthly, every limitation proposed by a ruler must be strictly justified by him. He cannot claim to make a reservation as a matter of right but must prove the need for it to the satisfaction of His Majesty. The Secretary of State for India illustrated the application of this principle to a State which proposed to retain the right of levying a duty on imports from British India at its frontier as follows: 'I certainly agree with Lord Lothian that there should be internal free trade under the Federation, whether it be between one Province and another, or whether it be between one Indian State and another. Lord Lothian will, however, remember that there are treaties with certain of the States that do affect the question of internal free trade. What, however, I can say to him is this, that it would be our desire that there should be this free trade, and that in the Instruments of Accession we should have constantly to keep this point in mind. Whether there may or may not be exceptions in particular cases must depend on the treaties with the States, and also upon the further fact whether in particular conditions it is worth while having a particular State in the Federation at all. I am not thinking of any actual case. I am thinking rather of an imaginary case, but suppose the case in which a State under its existing treaties could impose duties upon imports from British India, and the State offered to join the Federation, and we came to the conclusion that the entry of a State in conditions of that kind would really impinge upon the system of Federation; that, I imagine, would be a case in which we would refuse the application of the State in those conditions; but speaking generally, we should wish to see as wide an area of free trade within India as we could possibly obtain.'[1]

[1] *Minutes of Evidence taken before the Joint Select Committee*, Question 6705.

Elaborating the same principle the Joint Parliamentary Committee observed: 'A ruler who desires in his own case to except, or to reserve, subjects which appear in what we may perhaps describe as the standard list of Federal subjects in relation to the States, ought to be invited to justify the exception or reservation before his accession is accepted by the Crown. We do not doubt that there are States which will be able to make out a good case for the exception or reservation of certain subjects, some by reason of existing treaty rights, others because they have long enjoyed special privileges (as for example, in connexion with postal arrangements, and even currency or coinage) in matters which will henceforth be the concern of the Federation, but in our judgement it is important that deviations from the standard list should be regarded in all cases as exceptional and not admitted as of course. We do not need to say that the accession of all States to the Federation will be welcome; but there can be no obligation to the Crown to accept an accession, where the exceptions or reservations sought to be made by the ruler are such as to make the accession illusory or merely colourable.'[1] The same point was reiterated in the course of the debates in the House of Commons by the Secretary of State for India who emphasized that items 1 to 47 were 'the normal field of entry and exceptions from that field would have to be justified'.[2]

Fifthly, the legal effect of a limitation is that it will have full force and validity only within the territory of the State which has imposed it. It acts as a restriction on the competence of the Federal Legislature to make laws for the State on the subject in respect of which it is made, and the executive authority of the Federation is exercisable in the State subject to such limitation. But it has absolutely no effect on the exercise of the powers of the Federation in

[1] *Report of the Joint Parliamentary Committee on Indian Constitutional Reform*, para. 156.

[2] *House of Commons Debates*, 27 February 1935, p. 1148.

other units, for such powers are not derived from the Instrument of Accession of the State in question, but from the Act and the Instruments of other State-members. For instance, where a State desirous of protecting its rights of independent coinage makes a limitation to that effect on item 5. Currency, the Federal Government will have no right to put its currency in circulation within the territory of the State, and federal enactments regulating currency and coinage will not be operative therein. But the authority of the Federation to circulate its currency in British India and the other Federated States remains unaffected by the limitation imposed by the State. It follows from this that while the rights of a State within its territory can be adequately protected by suitable limitations made under its Instrument, such limitations offer no protection for the preservation of rights enjoyed by the State outside its territory.

The States are in possession of extra-territorial rights of various kinds. Some of them are secured by treaties and agreements between the States and the British Government, e.g. rights establishing free trade between certain States and British India, and rights to import salt and opium free of duty from British India. Others are founded on British-Indian Statutes and Resolutions of the Government of India recognizing and giving effect to well-known principles of International Law. The principle that a sovereign cannot be proceeded against in the tribunals of a foreign country is recognized, so far as civil liabilities are concerned, in the Civil Procedure Code of British India. This provides that no Ruling Prince or Chief shall be sued in any court in British India without the consent of the Governor-General in Council. By a Resolution of the Governor-General in Council rulers of States in possession of permanent salutes of 21 guns were given, in 1861, the right to import free of customs duty, at British-Indian ports, all goods intended for their personal use or the use of members of their families

residing with and dependent upon them. This right was in 1888 extended by the same procedure to all rulers having salutes of 19 guns. Rulers with salutes of not less than 11 guns possess the right of passing their personal effects through Customs free of duty when entering India on return from travelling abroad. By another Resolution the rulers of Indian States are exempted from the operation of the Indian Motor Vehicles Act and the rules thereunder.

It is quite possible for the Federal Legislature to extinguish these rights by legislation in British India. Thus the right of free importation of goods now enjoyed by the rulers may be extinguished by an enactment that no goods should be imported through British India without the payment of a duty. The rulers are naturally anxious to protect such rights from interference by the Federal Legislature. With a view to securing this object the Committee of Ministers and the Princes' Conference have suggested that a list of such extra-territorial rights should be scheduled to the Instrument of Accession and that the Instrument itself should contain a provision to the effect that federal legislation should not affect the rights thus scheduled. It is submitted that a provision on the lines suggested by the Committee is not legally adequate to protect the rights in question from interference by the Federal Legislature. For as pointed out above, the powers of the Federal Legislature to make laws in and for British India are derived from the Act and are exclusive. They cannot legally be restricted by the provisions of the Instrument of Accession of a State.

One point of importance which arises in connexion with the federal subjects is whether the States have any concurrent powers of legislation over them, that is to say, whether the States could continue to make laws on any federal subject so far as it is not covered by federal legislation. The possession of such a power by the States in respect of the sources of

revenue allocated by them to the Federation is expressly recognized in the Act which provides that nothing contained in chapter I of part VII affects any duties or taxes levied in any Federated State otherwise than by virtue of an Act of the Federal Legislature applying in the State.[1] This enables the States, for instance, to levy an excise duty on any commodity on which the Federation has not levied a duty, and even when the Federation imposes a duty on the same commodity, the State tax is not superseded by the federal tax, for the two may operate side by side without the one necessarily conflicting with the other. Thus in the Commonwealth of Australia, where the States have concurrent powers, both the States and the Commonwealth levy income-tax.

With regard to the other items, the position is by no means clear. The Chamber of Princes laid it down as a condition of the States' accession to the Federation that they should have concurrent powers of legislation on all federal matters. The Act, however, contains no provision recognizing the possession of such power by the States, with the exception of the above provision, nor is there anything in the Instrument of Accession to indicate that the States retain such power. The matter is left to be gathered by inference. The Act prohibits the Provinces from making laws on the items enumerated in the Federal Legislative List, but lays no such prohibition on the States. From this it may be inferred that the States may continue to make laws on any items so long as the entire scope of the subject is not covered by federal legislation. The same inference may also be drawn from section 107 (3) which provides that any provision of a State law which is repugnant to a federal law shall be void to the extent of such repugnancy. It may be said that the possession of concurrent powers of legislation by the States is implicit in the section, and that the State laws referred to in it are those made by a State in the exercise of its con-

[1] *Government of India Act*, sect. 143 (1).

current power. This argument, however, does not seem to be very convincing or conclusive. For the section may be held to apply to the reserved field as well, for in a federal constitution federal laws are paramount over even State laws falling within the reserved field.

Instead of leaving the subject to be a matter for inference, the States will do well to get a specific provision inserted in the Instrument expressly providing for such power. The Commonwealth of Australia Act establishes a distinction between subjects exclusively reserved to the Commonwealth and those which are not, and gives the States concurrent powers of legislation over the latter by expressly providing that every power of a State shall, unless it is by the Constitution exclusively vested in the Commonwealth, continue as at the establishment of the Commonwealth.[1] The Indian States may insert a provision on the same lines in their Instruments to remove all doubts in the matter.

The Federal Legislature is competent to make laws for a State on all items specified in its Instrument of Accession, subject to such conditions and limitations as are stated in the Instrument. On all matters which are not so specified the powers of the State remain unaffected, and the Federation has no right to interfere with them. The area of federal jurisdiction in a State is thus defined with absolute precision in its Instrument in terms of the Federal Legislative List.

This area is, however, likely to expand gradually at the expense of the State as a result of the interpretation which the Privy Council, which is the ultimate authority for the interpretation of the Constitution, might put upon the Constitution in cases of dispute between the States and the Federation with regard to their respective spheres of authority. All federal constitutions are developed by judicial interpretations and any particular interpretation given by the Federal Court stands as strong as the constitution itself

[1] *Commonwealth of Australia Act*, sects. 52 and 107.

with which it becomes incorporated unless the interpretation is recalled or modified by the same authority. The tendency of such interpretation is always towards the progressive enlargement of federal powers. India will be no exception to this tendency. An expansion of federal authority may take place in two ways. When a question arises as to whether any powers are exercisable in a State by the Federation, and the question is answered in the affirmative by the Privy Council, the power would later be recognized as a part of the Constitution. The other way is where a piece of State legislation is challenged on the ground that it is repugnant to a federal law and the Court holds the State law as void for repugnancy. In both cases, the decision enlarges federal powers by narrowing the limits of State authority.

In the United States the jurisdictions of the constituent units have been increasingly curtailed by a progressive broadening, by constitutional interpretation, of the scope of the federal powers, especially of the power to regulate inter-state commerce. The expanding importance of inter-state trade in the economic and industrial life of the United States, as well as a more liberal interpretation of the commerce clause of the Constitution, has been responsible for the increase of federal power at the expense of that of the States. In Canada and Australia the balance of power between the Central Government and the units has been upset in favour of the Central Government and to the great prejudice of the units. In both countries there is a demand for drastic amendment of the Constitution. The original rights of the units have been gradually effaced by the expansion of federal powers by judicial decisions which have determined that the units have surrendered rights which they never intended to give up at the time of federation. In Australia especially, the working of the Constitution since 1900 has brought about a relationship between the Commonwealth and the States totally different from anything which

could have been foreseen by the framers of the Constitution, and there is a strong demand for the restoration of the original rights of the States.

The one important principle which has materially helped to bring about an expansion of federal powers is that known as the doctrine of implied powers applied by the courts in interpreting the Constitution. This doctrine, briefly stated, is that the grant of legislative power to the Federal Legislature on any subject must be held to carry with it by implication power to make laws on all subjects incidental or ancillary to the exercise of that power, although those subjects are expressly reserved by the States. Thus, although criminal law is exclusively reserved by the States, it has been held in the United States that the federal power to manage post offices includes the right to fix penalties for the theft of letters. This doctrine was for many years a subject of bitter controversy among American jurists, but it has now come to be a cardinal principle in the interpretation of the Constitution both in the United States and in Australia. It has accordingly been held that Congress may legislate on matters like wages, contracts of employment, carriage of goods and hours of labour, as matters incidental to the regulation of inter-state commerce, though all these matters fall within the sphere reserved by the States. By the operation of this rule the grant of legislative power on a single subject draws along with it into the federal field even those subjects intended by the framers of the Constitution to be kept out of that field altogether.

Mr. J. H. Morgan, in the opinion given by him to the Chamber of Princes, drew the attention of the Princes to the effect which the application of this doctrine in the Indian Federation would have upon autonomy of the States. The Princes, however, seem to regard the chances of the Privy Council applying this doctrine to the interpretation of the Government of India Act and their Instruments of Accession

as very remote. The Constitutional Committee of the Chamber point out that placitum XXXIX of section 51 of the Commonwealth of Australia Act expressly confers ancillary powers on the Commonwealth Parliament, while there is no such express grant of incidental and ancillary powers to the Federal Legislature under the Government of India Act. It is therefore argued by the Committee that in the absence of any such express provision, it would not be proper to assume that the doctrine of implied powers would be applied in the Indian Federation.

This view of the matter does not, however, seem to be quite correct. The White Paper contained a proposal for conferring incidental and ancillary powers of legislation on the Federal Legislature. This proposal has not been embodied in the Act. The omission, however, is of little consequence. The British North America Act does not expressly confer ancillary powers on the Dominion Parliament. All the same the Privy Council has held such power to arise by implication. It has been held that in assigning to the Dominion Parliament legislative jurisdiction in respect of the general subjects of legislation enumerated in section 91, the Imperial Parliament, by necessary implication, intended to confer on it legislative power to interfere with, deal with, and encroach upon matters otherwise assigned to the provincial legislatures under section 92, to the extent of such ancillary provisions as may be required to prevent the scheme of such a law from being defeated.[1] The Privy Council has established and illustrated this in many decisions. No instance of this principle of implied powers could be stronger than the Canadian case of *Attorney-General for Canada* v. *Cain*, 1906 A.C. 542, where the Privy Council held that the legislative power to exclude aliens connoted the power to expel, as a necessary complement of the power of exclusion.

By the terms of the Canadian Constitution 'property and

[1] Lefroy, *Canada's Federal System*, p. 166.

civil rights' including contracts and torts, is a subject 'exclusively' reserved to the constituent Provinces. None the less the Privy Council has held that, in virtue of the Dominion Parliament having power to legislate in the matter of railways connecting one Province with another, it may also legislate as incidental to the main power to the exclusion of the Provinces, in all cases of tort and contract arising in a Province out of accidents occurring in that Province, if the accident is one that occurs on the railways in question. In one case it was clearly stated: 'The power to legislate in respect of any matter must necessarily to a certain extent enable the legislature so empowered to affect proprietary rights; and it may be added that where the legislative power cannot be effectually exercised without affecting the proprietary rights both of individuals in a Province and of the Provincial Government, the power so to affect those rights is necessarily involved in the legislative power.'[1] In another case where the constitutionality of certain provisions of the Combines Investigation Act passed by the Dominion Parliament was challenged on the ground that those provisions trenched upon 'property and civil rights' exclusively reserved to the Provinces by the Constitution, the Privy Council observed: 'If then the legislation in question is authorized under one or other of the heads specifically enumerated in Section 91, it is not to the purpose to say that it affects property and civil rights in the Provinces. Most of the specific subjects in Section 91 do affect property and civil rights, but so far as the legislation of Parliament in pith and substance is operating within the enumerated powers there is constitutional authority to interfere with property and civil rights.'[2]

It may therefore be assumed that the Privy Council

[1] *Attorney-General for Quebec* v. *Nipissing Central Railway Company*, 1926, A.C. 715 at 724.

[2] *Proprietary Articles Trades Association* v. *Attorney-General for Canada*, 1931, A.C. 310 at 326.

will apply the principle of incidental and ancillary powers in cases arising under the Government of India Act to the extent to which it is applied in the Canadian constitution.

The second factor which tends towards curtailing State authority is the doctrine of progressive interpretation.

This doctrine may be stated to be the view that constitutions, being essentially designed to serve a permanent, and not merely a temporary end, where there is no express command or prohibition, but only general language and a general policy to be drawn from the four corners of the Instrument, the chief consideration in their construction should be present conditions, relations, and requirements, and that, when the language of the constitution under consideration will bear it, these should determine the interpretation.

The application of this doctrine to the interpretation of the Commerce Clause of the United States' Constitution was thus illustrated by an eminent American judge: 'The powers granted by the Commerce Clause are not confined to the instrumentalities of commerce, or the postal service known or in use when the Constitution was adopted, but they keep pace with the progress of the country, and adapt themselves to the new developments of time and circumstances. They extend from the horse with its rider to the stage-coach, from the sailing vessel to the steamboat, from the coach and the steamboat to the railroad and the telegraph, as the new agencies are successively brought into use to meet the demands of increasing population and wealth.'[1] This doctrine has never been questioned.

The above two factors may be taken to operate in the Indian Federation, in the direction of narrowing the limits of State authority in the same manner as they have done in other federations. This is a necessary consequence of the

[1] *Penascola. Tel. Co.* v. *W. U. Tel. Co.*, 96 U.S. 1.

accession of the States to the Federation, and no limitation can be devised to protect them against federal encroachments under the sanction of judicial decisions.

There is yet another factor which is no less powerful in bringing about a reduction in the status of the constituent units. This is the system of making grants of money to the units from the Federal Treasury on the condition that the units should do certain things approved by the Federal Government. Such grants have been numerous during recent years in the United States, and their constitutionality has been challenged on the ground that their purpose and effect is to bring under federal control matters constitutionally within the exclusive control of the States. The Maternity Act provided for appropriations from the Federal treasury to be apportioned among such of the States of the Union as should accept them and comply with the provisions of the Act with reference to steps to be taken to reduce maternal and infant mortality and to protect the health of mothers and infants. The Act created a bureau to act in co-operation with State agencies which were required to make reports to the Federal bureau concerning their operations and expenditures.

The State of Massachusetts contested the validity of this Act on the ground that the appropriations constituted a means of inducing the States to yield a portion of their sovereign rights. It was argued that the plaintiff's rights and powers as a sovereign State were thus invaded and usurped by the Federal Government, and that there was imposed upon the State the alternative of either yielding to the Federal Government a part of its reserved rights or of losing its share of the moneys appropriated—moneys in part collected from the citizens of the State. The Supreme Court held that the case presented no justiciable controversy. 'Probably it would be sufficient', said the Court, 'to point out that the powers of the State are not invaded, since the

statute imposes no obligation, but simply extends an option which the State is free to accept or reject.'[1]

In the Indian Federation also, the Federal Government is empowered to make grants to the units 'for any purpose, notwithstanding that the purpose is not one with respect to which the Federal Legislature may make laws'.[2] In exercising this power the Federal Government may bring about the increasing subordination of the States to federal control by attaching such conditions to its grants as would induce the States to exercise their reserved constitutional powers in ways, and for purposes, which the Federal Government approves.

[1] *Massachusetts* v. *Mellon*, 262 U.S. 447.
[2] *Government of India Act*, sect. 150 (2).

CHAPTER IV

THE FEDERAL CENTRE IN RELATION TO THE STATES

THE legislative organ of the Federation consists of His Majesty, represented by the Governor-General, and two Chambers, known respectively as the Council of State and the Federal Assembly, empowered to deal with the whole range of the activities of the Federation.[1]

The Council of State is the Upper House and is composed of 260 members of whom 156 are representatives of British India and 104 representatives of the Federated States.[2] Of the representatives of British India 150 are elected on high franchise qualifications by voters in territorial communal constituencies and six are nominated by the Governor-General, the object of such nomination being to secure the services in the Council of persons of 'the elder statesmen type'. The Council is a permanent body and is not subject to dissolution. Its members remain in office for a period of nine years, but one-third of them retire every third year, so that the whole body is renewed in a period of nine years, the old members being thus at any given moment twice as numerous as the new members within the last three years.[3]

The Federal Assembly, which is the Lower Chamber, consists of 375 members of whom 250 are representatives of British India and 125 are representatives of the States.[4] The members from British India are elected by the provincial lower houses by means of the single transferable vote. The

[1] *Government of India Act*, sect. 18 (1).
[2] Ibid., sect. 18 (2).
[3] Ibid., sect. 18 (4).
[4] Ibid., sect. 18 (2).

life of the Assembly is five years, but it may be dissolved earlier by the Governor-General in his discretion.[1]

The scheme of the Federal Legislature embodied in the Act is radically different from what was recommended by the Round Table Conference. Looked at from the point of view of British India it is made far less democratic than even the pre-Federation Central Legislature. The Montford Reforms had for the first time set up in India a legislature constituted on the principle of representation by direct election. Both the Council of State and the Legislative Assembly were composed of a majority of members directly elected by those qualified to vote. No change is made under the Act in the method of election of the Council of State. Its members will continue to be elected as before by voters possessing the qualifications prescribed in the Act.

In the case of the Assembly, however, direct election is to be replaced by indirect election. The Montford Reforms had enfranchised about 1·1 million people. This electorate, though small, had 'shown a progressively increasing readiness to go to the polls' and there had 'undoubtedly been some growth of genuine political interest'. In 1920, 25 per cent. of the electorate went to the polls; this percentage had increased to 42 per cent. and 48 per cent. at the two succeeding elections. The Assembly had come to occupy a definite place in national life, and, as stated by the Government of India in its Dispatch, 1930, the system of direct election had 'contributed to the strength of the Assembly as a focus of national allegiance'. The Indian had come to realize the value of the direct vote and all sections of Indian opinion were unanimous in demanding that the franchise should be greatly extended so as to make the Assembly more popular and truly representative of the nation. But quite contrary to Indian sentiment even this small electorate is abolished and the India Act, while purporting to extend the sphere of self-

[1] *Government of India Act*, sect. 18 (5).

government in India, extinguishes the direct vote which the Indian had come to regard as a symbol of his national consciousness.

The members of the Assembly are to be elected henceforward by provincial assemblies, the various communities voting separately for their own representatives. In several cases small groups of 20 or 30 persons in the provincial assemblies elect and send in 8 or 9 representatives each. The Federal Assembly will thus represent the small groups to which its members primarily owe their election and not any large section of the people. The provincial legislatures will be able to maintain an effective control over the Assembly.

The only reason given for demolishing the edifice reared by the Montford Reforms, and for taking what was condemned by all classes of Indians as a highly retrogressive and reactionary step, was that the orthodox system of representation by direct election was quite unsuited to India, as the vast size of the constituencies made it impossible for the representative to maintain that close and intimate nexus with his electors which was essential for a proper system of representation. This argument is on all fours with that advanced by those who opposed the Reform Bill of 1832 in England—an argument which provoked the satirical remark of Carlyle that the 'nexus' which they desired to preserve was nothing else than 'a cash nexus'.

The Indian Statutory Commission regarded the vast size of the constituencies as a formidable difficulty, and with a view to overcoming it they suggested that the members of the central legislature should be elected by the provincial legislatures. They claimed that this plan would establish a close nexus between the representative and the provincial legislature, and that he would know that his actions would be subject to the criticism of a body of provincial legislators and thus lead to the creation of an enhanced sense of

responsibility in him.[1] These views were ably controverted by the Government of India in its Dispatch on Indian Constitutional Reform, 1930; and the Indian Franchise Committee presided over by the Marquis of Lothian adduced several reasons against the adoption of indirect election. The Joint Parliamentary Committee, however, indicated their strong preference for the plan suggested by the Statutory Commission. The Government of India Bill accordingly provided indirect election to both Chambers, the members of the Lower Chamber being elected by the provincial lower houses and of the Upper Chamber by the provincial upper houses. But at the last moment, by a series of amendments made at the instance of Lord Linlithgow in the House of Lords, direct election was substituted in the case of the Council of State.

Though this was no doubt an improvement, it created nevertheless a ridiculous situation. Generally in all democracies the lower house is popularly elected while the upper house is chosen in a variety of ways. But in the Indian Federation the Upper House is popularly elected so far as British India is concerned, and the Lower House is chosen by a process of indirect election. The popular house will not thus be the popularly elected house. It may end by becoming the unpopular house.

It further introduces another curious and novel feature into the Indian Federation distinguishing it from all other federations. The problem to be solved generally in all federal constitutions is how to reconcile the two opposing forces of the spirit of nationalism and the spirit of provincialism, the one tending towards the creation of a strong central government and the other pulling in the direction of the federated units. The solution is generally found in a legislature constituted partly on national and partly on federal lines. The national part of the legislature is the lower house where the

[1] *Indian Statutory Commission Report*, vol. ii, paras. 137 and 138.

people united under the federation are represented, and the federal part is the upper house which represents the federated units as such. The two forces are thus balanced against one another, the weight of the upper house guarding against the consolidation of the units into a single State by the spirit of nationalism gaining the upper hand, and the lower house counterbalancing an undue preponderance of local sentiment leading to disunion. It is on this principle that the Legislatures of the United States, the Commonwealth of Australia, and of Imperial Germany were constituted. The Federal Structure Committee of the Round Table Conference, who were keenly alive to the centrifugal and centripetal forces in India and the need for balancing them against each other, recommended that the Federal Legislature of India should also be constituted on the same principle. But the scheme, as it has finally emerged in the Act, totally reverses this principle. The Upper Chamber is made to represent the people, and the Lower Chamber the federated units.

The States are entitled on the strict basis of their population to 60 seats in the Council and 90 seats in the Assembly. But they demanded that, in view of the fact that they would form a minority in the Legislature, they should have some weightage in both Chambers. On their behalf His Highness the Maharaja of Bikanir claimed that this weightage should be 50 per cent. in the Upper Chamber, but it was stoutly resisted by the British-Indian Delegation. Finally, the Federal Structure Committee recommended in their Third Report that 'the allotment of seats to the States should be in the proportion of 40 per cent. in the Upper Chamber and 33⅓ per cent. in the Lower', though the Muslim delegation and several other members were opposed to the principle of giving such weightage.[1] The States are accordingly given the weightage recommended by the Committee. They get 104 seats in the Council and 125 seats in the

[1] *Third Report of the Federal Structure Committee*, para. 14.

Assembly, the additional 44 and 35 seats being the weightage given to them.

The question of the distribution to the States *inter se* of the seats allotted to them was beset from the outset with difficulties mostly arising from the clamour of the smaller States for individual representation. With the limited number of seats allotted to the States as a body it was impossible to satisfy the claim for such representation and some form of grouping of the smaller and smallest States was in the very nature of things inevitable. Though this was clearly recognized, preposterous demands for equality of representation were put forward without any reference to the relative size or population of the States concerned, and it was claimed that all the 109 States which were members of the Chamber of Princes should have separate representation on the Federal Legislature also.

When the subject came up for consideration before the Federal Structure Committee it engendered some heat in the discussions, the champions of the Chamber of Princes holding that the distribution of seats to the States *inter se* was primarily a matter affecting the States alone, and that it should therefore be left to be determined by the States themselves. On the other side grave doubts were entertained about the possibility of the Princes ever coming to an understanding on a question of this kind, and it was suggested that the best course to follow under the circumstances was to refer the whole question to an independent and impartial tribunal for consideration and report. The Committee recorded both views and expressed the opinion that in case no agreement was reached by the Princes by March 1932, an impartial tribunal should be set up to advise His Majesty's Government in the matter.[1] Later events justified the wisdom of those who had suggested the appointment of a Committee; for after a prolonged discussion,

[1] *Third Report of the Federal Structure Committee*, para. 26.

leading to a split among the Princes, the Chamber had to confess its inability to reach an amicable settlement and was forced to invite the Viceroy to decide the matter.

The decision given by the Viceroy in response to this invitation is embodied in the Government of India Act. The detailed allocation of seats to the States *inter se* is given in the table appended to part II of the First Schedule to the Act.[1] According to this table 12 States obtain plural representation in both Chambers and they return in all 31 members to the Council and 52 to the Assembly. Six States get two seats each in the Council and a single seat each in the Assembly. Sixteen States are given a single seat each in both Chambers. Nine States are given one seat each in the Council and are grouped with other States for purposes of representation in the Assembly. One State, Sikkim, has no representation at all in the Assembly. The remaining States are clubbed together in groups of two, three, and sometimes more, each group returning one member to each Chamber with the exception of the residuary group which sends in two members to the Council and five to the Assembly.

The allocation made under the Act is not very satisfactory from any point of view. The major States are deprived of their share of the weightage seats in the Assembly and are given the number of seats to which they would be entitled if no weightage at all had been given to the States as a body. Thus Hyderabad, Mysore, and Travancore, which were entitled to 23, 10, and 8 seats respectively, get only 16; 7, and 6 seats each. Kashmir and Gwalior which ought to have obtained 6 seats each are given only 4. The representation of the major States is thus reduced by a third.

In the case of the Council the distribution is based on the rank of the State as indicated by the dynastic salute of its ruler, though it has been admitted by high authority that

[1] *Vide* Appendix p. 279.

such salutes afford no guide to representation. When the constitution of the Chamber of Princes was under discussion, Lord Chelmsford, as Viceroy, in his speech at the Princes' Conference, 1919, said that he and Mr. Montagu, the then Secretary of State for India, were of opinion that the whole question of salutes needed most careful investigation in view of the anomalies which appeared to exist, and that they held, therefore, that it would be unwise to base upon the salute list, as it stood, any fundamental distinctions between the more important States and the remainder.

The distribution made under the Act, however, proceeds on the basis of the salute list, and States, the rulers of which enjoy a salute of 21 guns, are allotted 3 seats and those the rulers of which have 19 guns, 2 seats, and so on. This results in inflicting a grave injustice on the major States by depriving them not merely of their share of the weightage seats, as in the case of the Assembly, but also of a portion of what they are entitled to on the basis of their population. How hard these States are hit by such distribution may be judged from the fact that the representation of the State of Hyderabad is reduced by more than a half. On the basis of its population it is entitled to 11 seats, but it gets only 5. The State of Mysore, the population of which is twice that of Kashmir and Gwalior and two and a half times that of Baroda, is to rest content with 3 seats for no other reason than that of its ruler having the same number of salutes as the rulers of these States. Travancore gets a representation on a par with the State of Kalat, the population of which hardly approximates to one-fifteenth of that of Travancore.

The representation of the major States is further reduced to much below what is allotted to Provinces of corresponding size and population. Hyderabad and Mysore are comparable in point of population to the Central Provinces and Orissa respectively. While the Central Provinces are given 8 seats,

Hyderabad gets 5, and as against the 5 seats allotted to Orissa, Mysore gets 3.

The seats thus taken away from the major States are distributed among the smaller ones with the result that the Federal Legislature is over-filled by representatives of petty States, and the major States with more solid and substantial interests are condemned to perpetual under-representation. Petty States, with a population of hardly one-twentieth of a constituency in British India, are given separate representation simply because at some period in the history of their relationship with the British Government a gun salute was for some reason or other conferred on its ruler. Such representation would perhaps be quite unobjectionable if the Federal Legislature were an ornamental body like the Chamber of Princes, discussing questions of precedence among rulers, *Mizaz Pursi*, ceremonials to be observed at Viceregal visits, how many steps away from the carpet a ruler should receive the Viceroy and the like. The decisions of such a Chamber are of no consequence, but the laws made by the Federal Legislature do not operate on the puffs of smoke emitted by the salute guns but bind millions of men living in the States. In a legislature of this kind where decisions are reached by a counting of votes, the distribution of seats on any basis other than that of population cannot be justified by any principle of political ethics.

While the representatives of British India are elected, the representatives of States entitled to separate representation are nominated by the rulers of the States concerned. It was urged at the Round Table Conference that the States also should accept the principle of popular election and fall in line with British India. But the Princes pointed out that the conditions in the States—social, political, economic, and administrative—varied so much that it was not practicable to lay down any hard and fast rule applicable to all the States, and that each State must be left to determine for

itself the best method of choosing its representatives having regard to the circumstances existing in it. It was accordingly decided to leave this matter to the judgement of the States themselves. The Act, however, contains no provision for such nomination, but leaves it to be gathered by inference. The Ministers' Committee and the Princes' Conference have therefore suggested that a clause expressly providing for such nomination should be inserted in the Instrument of Accession.

The representatives of States which are grouped together for purposes of representation are, in the case of the Federal Assembly, elected by the rulers of the States constituting the group.[1] In the case of the Council of State, however, two alternative methods are prescribed by the Act. The rulers of a group of States may each appoint a representative in rotation to fill the seat allotted to the group, and the person so appointed will continue to be a member of the Council for a period of one year.[2] For example, the three States of Bijawar, Charkhari, and Chhatarpur in Central India are constituted into a group and given one seat in the Council. Each of these States may fill the seat in rotation for a period of one year. If this method is adopted by them, they remain disenfranchised for the next two years. The other method is that of election by the rulers of the group who may by agreement, and with the approval of the Governor-General in his discretion, jointly appoint a person to fill the seat.[3] Each ruler has one vote at such elections and in the case of an equality of votes the choice shall be determined by lot or in such other manner as may be prescribed.[4]

The period for which a person appointed to fill a seat in the Council of State, by a State entitled to separate representation, is nine years, by groups of States appointing jointly, three years and by States appointing in rotation, one

[1] *Government of India Act*, First Schedule, part II, rule 6 (ii).
[2] Ibid., rule 6. [3] Ibid., rule 6. [4] Ibid., rule 9.

year. For the Federal Assembly the tenure of a State representative is five years in all cases.[1] By thus fixing a period for the tenure of a State representative, the Act has made him totally independent of the State or group of States appointing him. When once he is nominated, the representative becomes independent of the ruler and he is not liable to be removed or recalled, although he may have forfeited the confidence of the ruler or even become antagonistic to him or, by allying himself with the parties in British India, may work against the interests of the State which he represents. Some of the Princes, who could not naturally contemplate with equanimity the possibility of their representatives thus getting out of their control, suggested that provision should be made in the Constitution Act enabling the ruler to call upon his representative to vacate his seat by giving him notice in writing to do so. This suggestion did not find favour with the Joint Parliamentary Committee who held that a State representative, although he was nominated and not elected, held his seat on precisely the same tenure as an elected representative from British India, and no distinction should be made between the two.[2] The Act does not therefore confer such a power on the rulers. But the Chamber of Princes seems to be still pursuing the matter and proposing that provision should be made in the Instrument of Accession giving a ruler the power of recalling his representative. It is very doubtful whether, in view of the democratic nature of the new Constitution and the definite pronouncement made by the Joint Parliamentary Committee, this proposal will be accepted by His Majesty's Government. But even without such a provision the Princes may very well achieve their object in other ways. They may appoint as their representatives only State officials over whom, by reason of their position, they have full control

[1] *Government of India Act*, First Schedule, part II, rule 7.
[2] *Report of the Joint Parliamentary Committee*, para. 210.

and, if necessary, bring about a vacation of their seats by the representatives by insisting upon their resignation.

The members of the Legislature are required before taking their seats to subscribe to an oath which in the case of the States' representatives is quite different from that prescribed for the British-Indian members. It is so framed as to meet the sentimental objection of the Princes that it should not detract in any way from the allegiance which they owe to their own rulers. In making his oath a State representative swears to be faithful and bear true allegiance to the Crown 'saving the faith and allegiance' which he owes to his ruler.[1]

The Federal Legislature is empowered to legislate for the Provinces on all matters enumerated both in the Federal Legislative List and the Concurrent Legislative List, while its powers of legislation in regard to the Federated States are confined only to the first 47 items of the Federal Legislative List which the States are accepting; and in the case of individual States are further limited by the conditions contained in their respective Instruments of Accession.[2] The authority of the Legislature is thus much wider in the case of the Provinces than it is in the case of the States. This difference in its competence in regard to the two classes of units leads to one extraordinary anomaly in the new Constitution. The States' representatives may take part in the discussion of matters affecting only the Provinces, unless they take a holiday on occasions when business affecting British India alone is transacted in the Legislature. By their presence in the Legislature on such occasions they may by their votes help the passage of any measure unpopular with a large section of the British-Indian representatives without the States represented by them being in the least affected by such measures. As described picturesquely by Mr. Churchill: 'The Princes who are to come in with every

[1] *Government of India Act*, 4th schedule, form 3.
[2] Ibid., sects. 100 and 101.

kind of reservation for themselves may sprawl broadly over the entire politics of British India.'[1]

The attitude of the Princes themselves with regard to this matter was expressly stated by His Highness the Ruler of Bhopal at the second Round Table Conference. During the course of the discussions at the Federal Structure Committee, His Highness said: 'May I make the position of the Indian States quite clear? They are not at all keen or anxious to vote on any matters which are the concern of British India.' A similar statement was made by His Highness the Maharaja of Bikanir. But they urged that an exception should be made of cases involving the existence of the Ministry. It was claimed that in such cases, though the matter at issue affected British India alone, the States' representatives should have the right of voting, as the Ministry was common to both the States and British India.

The British-Indian Delegation, however, were not satisfied with the assurance thus given by the Princes. They suggested that a statutory provision must be made to the effect that States' representatives should not vote upon any bill or motion affecting the interests of British India alone, and that the decision of any question as to whether it affected the interests of British India alone or not should be left to the Speaker of the House. As for the point raised by the Princes regarding British-India issues involving the life of the Ministry, they urged that the States' representatives should be entitled to vote only where a substantial vote of no confidence was proposed.

The Joint Parliamentary Committee thought that the suggestions of the British-Indian Delegation would not in any way meet the case. They opined that the distinction between formal votes of no confidence and other votes was an artificial and conventional one, and that circumstances might make any vote of a Legislature, even on a trivial

[1] *House of Commons Debates*, 13 March 1935, p. 356.

matter, an unmistakable vote of no confidence, and that it was therefore impossible to base any statutory enactment on such a distinction. They recommended that in the circumstances there should be no statutory prohibition of the kind suggested by the British-Indian Delegation, but that the matter should be regulated 'by the common sense of both sides and by the growth of constitutional practice and usage'.[1]

No statutory bar is accordingly placed under the Act against State representatives taking part in legislation affecting British India. The matter is left to be governed by a convention to be developed by the good sense of the States' representatives who, while normally abstaining themselves from voting upon any British-India matter, will have to judge for themselves whether any particular matter is such as to demand their participation in it. The Convention will naturally take some time to grow, but even when it is well developed it will not be legally enforceable. It will not belong to that class of conventions the breach of which, according to Dicey, brings the offender indirectly into conflict with the courts and the law of the land. No State representative violating the convention would be liable to any penalty other than that of public opprobrium, and no measure passed with the aid of his vote would on that account become invalid. The force of the convention depends upon the degree to which it is respected by those who are bound by it.

As regards the internal affairs of the States, their discussion in the Central Legislature is absolutely forbidden under the present system by the Indian Legislative Rules. This will undergo modification as a result of the accession of the States to the Federation. The Federal Legislature is fully competent to deal with all federal matters, and any matter falling within the federal sphere accepted by a State

[1] *Report of the Joint Parliamentary Committee*, para. 217.

may therefore be discussed in it. In respect of matters connected with a State in the non-federal sphere, the Governor-General shall make rules prohibiting the discussion of such matters in the Federal Legislature and the asking of questions thereon. But if he considers that any matter involves federal interests or the interests of a British subject he may depart from the rule and give his consent to its discussion.[1] This exception provides the thin end of the wedge for drawing into discussion the internal affairs of a State with which the Federal Legislature has no manner of concern. Thus where a British subject is convicted in a State for committing an offence under State laws, the matter may be raised in the Federal Legislature on the ground that substantial justice has not been done to him, and the system of criminal laws in the State, which in many States is quite different from that in British India, may be subjected to severe criticism. Similarly where federal troops are employed to suppress internal disturbances in a State, it may be claimed that federal interests are involved; and the propriety of the use of federal troops for such purposes may be questioned and the State system of administration upheld with the aid of federal troops may be freely criticized and condemned. The rule that the Governor-General's previous consent should be obtained for the discussion of such matters affords indeed a valuable safeguard to the States against their internal affairs being unnecessarily raised and discussed in the Federal Legislature. But if the Governor-General is unable to resist the pressure brought to bear upon him by the British-Indian representatives, there would be a steady encroachment on the States, and the entire range of the internal affairs of a State might be brought under discussion in the Federal Legislature under the guise of federal interests or the interests of British subjects being at stake.

The laws made by the Federal Legislature in accordance

[1] *Government of India Act*, sect. 38.

with the Instrument of Accession of a State shall extend to the State. Any provision of a State law which is repugnant to a federal law shall be void to the extent of such repugnancy.[1] This rule of the supremacy of federal laws is common to all federal constitutions, and even where it is not expressly mentioned, as in the Canadian Constitution, it is held to be inherent in a federal system. The rule, clear enough in itself, is not without some difficulty in its application. It was suggested at one time in the United States that the rule of supremacy applied where both the Central Government and the State were acting under the same head of power. For instance, Congress makes a law which is valid as a regulation of foreign or inter-state commerce, and that rule is paramount over all commercial regulations of the States. But if the law comes into conflict with a State statute which is valid, not as a regulation of commerce, but as an exercise of 'police power', the case, it was said, is different. Congress is given no power over police, and the case is one of two independent authorities each acting within its own sphere. Hence arises 'a conflict of equal opposing forces'. This was one of the arguments in *Gibbons* v. *Ogden*, and was disposed of by the decision that the supremacy of the laws of the Congress extends over all laws of the State made in whatever capacity or under whatever head of power.[2] The adoption of such an interpretation of the rule in the Indian Federation would render even the State laws regulating a non-federal matter void when they are inconsistent with any federal law, to the extent of such inconsistency.

The executive authority of the Federation is exercised by the Governor-General on behalf of His Majesty, and he is required to exercise his functions in accordance with the directions contained in the Instrument of Instructions issued to him by His Majesty.[3] Federal executive authority extends

[1] *Government of India Act*, sect. 107 (3).
[2] Sir Harrison Moore, *Commonwealth of Australia*, p. 407.
[3] *Government of India Act*, sect. 7.

to all matters on which the Federal Legislature is competent to make laws: the raising of naval, military, and air forces on behalf of His Majesty in British India, the governance of His Majesty's forces borne on the Indian establishment, and the exercise of such rights, authority, and jurisdiction as are exercisable by His Majesty in tribal areas by treaty, grant, usage, sufferance or otherwise. It extends in the case of a State to those matters on which the State has acceded to the Federation in so far as such authority has not been reserved in whole or part by the State itself. A ruler's executive authority in respect of any matter accepted by him is not displaced by federal executive authority immediately on his accession. It will continue to be exercisable by him as before and will be displaced by Federal authority when a federal law dealing with that matter is enacted, and to the extent provided in that law.[1]

The principle of the responsibility of the Executive to the Legislature was accepted by the Federal Structure Committee and it was agreed that during 'a period of transition' it should not extend over all federal affairs. As stated by the Joint Parliamentary Committee, the Federal Executive will be 'in some measure' responsible to the Federal Legislature, but this responsibility 'will not extend to all subjects'. Certain functions of the Governor-General are declared by the Act to be exercisable by him at his discretion and in exercising those functions he is responsible to His Majesty's Government and Parliament. The more important of such functions relate to Defence, External Affairs, and Ecclesiastical administration. These three departments are reserved departments and are directed and controlled by the Governor-General himself in his discretion. To assist him in such administration he may appoint counsellors, not exceeding three in number, whose salaries and conditions of service shall be such as may be prescribed by

[1] *Government of India Act*, sects. 8 (1) and 8 (2).

His Majesty in Council.[1] The counsellors are *ex-officio* additional members of both Chambers of the Legislature, but without the right to vote,[2] the purpose of conferring such membership on them being that they should act in the Legislature as the spokesmen of the Governor-General on matters connected with the reserved departments.

In all other matters the Governor-General is responsible to the Federal Legislature. To aid and advise him on such matters there shall be a council of ministers not exceeding ten in number.[3] The ministers are chosen, summoned and sworn by the Governor-General and hold office during his pleasure. A minister shall cease to hold office if for a period of more than six consecutive months he is not a member of either Chamber.[4] In making appointments to this council the Governor-General is directed by his Instrument to appoint, in consultation with the person who, in his judgement, is most likely to command a stable majority in the Legislature, those persons (including, so far as is practicable, representatives of the Federated States and members of important minority communities) who will best be in a position to command the confidence of the Legislature.[5] The Governor-General is further directed by his Instrument to be guided by the advice of his ministers on all matters which are not committed to his discretion.

Dyarchy is thus installed in the Federation, one part of the affairs of the Federation being conducted by the Governor-General in responsibility to Parliament and the other part on the advice of ministers commanding the confidence of the Indian Legislature. The ministers have no constitutional right to guide the Governor-General in any matter declared by the Act to be within his discretion. The Act does not prohibit him from consulting his ministers even on

[1] *Government of India Act*, sect. 11. [2] Ibid., sect. 21.
[3] Ibid., sect. 9 (1). [4] Ibid., sect. 10 (1) and 10 (2).
[5] *Draft Instrument of Instruction*, clause viii.

such matters. As a matter of fact he is directed by his Instrument to 'encourage the practice of joint consultation between himself, his counsellors and his ministers'.[1] But any decision taken must be his own.

In all matters in which he is not required to act in his discretion, the Governor-General is bound to accept the advice of the ministers and be guided by them. But if he considers that to be so guided in any particular instance would be inconsistent with the fulfilment of any of what are declared by the Act to be his special responsibilities he may, notwithstanding his ministers' advice, act in such manner as to his individual judgement seems requisite for the due discharge of his responsibilities.[2]

The special responsibilities are (1) the prevention of any grave menace to the peace and tranquillity of India or any part thereof; (2) the safeguarding of the financial stability and credit of the Federal Government; (3) the safeguarding of the legitimate interests of the minorities; (4) the securing to, and to the dependents of, persons who are or have been members of the public services of any rights provided or preserved for them by or under the Act and the safeguarding of their legitimate interests; (5) the securing in the sphere of executive action of the purposes which the provisions of chapter III of part V of the Act (dealing with the prevention of commercial discrimination) are designed to secure in relation to legislation; (6) the prevention of action which would subject goods of the United Kingdom or Burmese origin imported into India to discriminatory or penal treatment; (7) the protection of the rights of any Indian State and the rights and dignity of the ruler thereof; and (8) the securing that the due discharge of his functions with respect to matters to which he is by or under the Act required to act in his discretion, or to exercise his individual judgement,

[1] *Draft Instrument of Instruction*, clause xvii.
[2] Ibid., clause ix.

is not prejudiced or impeded by any course of action taken with respect to any other matter.[1]

The special responsibilities do not form separate and independent departments kept out of the purview of the ministers like the reserved departments. They indicate a sphere of action in which it will be constitutionally proper for the Governor-General, after receiving ministerial advice, to signify his dissent from it and even to act in opposition to it, if in his own unfettered judgement he is of opinion that the circumstances of the case so require. The special responsibilities are duties laid on the Governor-General for certain specific purposes and as such pervade the entire range of federal administration. They may arise at any time in any department. They were described by Sir Samuel Hoare as signposts or labels indicating to the Governor-General, and incidentally to the ministers, certain purposes the fulfilment of which the Governor-General is directed to secure, if necessary by refusing to be guided by the minister's advice, wherever he considers that the advice tendered to him would be inimical to the fulfilment of those purposes. The nature and scope of the special responsibilities were thus illustrated in the White Paper: 'To take a concrete case, it is clearly the duty of ministers rather than of the Governor-General himself, to ensure that the administration of their departments is so conducted that minorities are not subjected to unfair or prejudicial treatment. The intention of attributing to the Governor-General a special responsibility for the protection of minorities is to enable him, in any case where he regards the proposals of the minister in charge of a department as likely to be unfair or prejudicial to a particular minority, in the last resort to inform the minister concerned, that he will be unable to accept the advice tendered to him.'[2] It is not contemplated that the Governor-General will find

[1] *Government of India Act*, sect. 12.
[2] White Paper, Introduction, para. 26.

it necessary to be constantly overruling his minister's advice. It is assumed that every endeavour will be made by those responsible for working the constitution to approach the administrative problems in the spirit of partners in a common enterprise.

The method adopted to bring about the responsibility of the Executive to the Legislature is in consonance with the constitutional usage and practice prevailing in the British Empire. The procedure generally followed in introducing a system of responsible government in any part of the Empire is by establishing a council of ministers by statute or letters patent and then by directing the Governor, or the Governor-General, as the case may be, by his Instrument of Instructions to conduct his administration on the advice of ministers acceptable to the legislature. Such Instructions are, however, susceptible of infinite variation, according to the stage of constitutional development with which they are intended to deal. They may, for example, direct the Governor-General either to exercise his powers entirely at his own discretion, consult his ministers but not necessarily follow their advice, or to be guided by the advice of ministers in certain matters though not in others, or to act in all matters on his ministers' advice. This constitutional device is followed in the case of the Indian Federation also. Executive power and authority are invested by the Act in the Governor-General and he is given an Instrument of Instructions directing him as to the manner in which he should exercise those powers. The Instrument directs him to be guided by the advice of his ministers in all matters with regard to which they are competent under the Act to advise, unless to be so guided would in his opinion be inconsistent with the fulfilment of any of his special responsibilities.

One novel procedure is, however, adopted in connexion with the Instrument of Instructions. Generally the Instrument is issued to the Governor-General by His Majesty on

the advice of the British Cabinet of the day, but in the case of the Indian Federation the Instrument requires Parliamentary sanction before it is finally issued by His Majesty. It is provided that the Secretary of State shall lay before Parliament the draft of any Instrument of Instructions (including any Instrument amending or revoking an Instrument previously issued) which is proposed to be issued to the Governor-General, and no further proceedings shall be taken in relation thereto except in pursuance of an address presented to His Majesty by both Houses of Parliament praying that the Instrument may be issued.[1] This provision means that, if a subsequent British Cabinet, in view of the altered circumstances in India, desires to effect some change in the Instrument, as for instance making it mandatory on the Governor-General to act on ministerial advice in all matters, it could only do so, after obtaining Parliamentary sanction for such a change. Both the House of Commons and the House of Lords are given an effective control over amendments to the Instrument. 'It means', as stated by Mr. F. S. Cocks in the House of Commons, 'that the future development of India so long as the House of Lords exists, if it is not swept away by an indignant democracy, lies entirely in the hands of the Conservative party.'

The implications of this provision were lucidly explained by a former Secretary of State for India, Mr. Wedgwood Benn, as follows: 'One curious feature of the plan was an alteration in the method of framing the Governor-General's Instrument of Instructions. Hitherto this has been an executive act of the British Cabinet. Now for the first time it has been made a Parliamentary document or rather, a definite matter of quasi-legislation. It must be submitted both to the House of Commons and the House of Lords for approval. From the British angle this is a constitutional innovation, for the Lords have never hitherto been permitted

[1] *Government of India Act*, sect. 13.

to have any control over Administration. From the Indian point of view the effect is to deprive any future Government of a freedom which all have hitherto enjoyed. In a word, should a Labour Government be elected to power at some future date it would be subject in this matter to a House entirely unaffected by the electoral decision which had placed the Government itself in office. It is unfortunate that the House of Lords should be brought again into a prominent position in Indian affairs. Their resolution which appeared in a measure to condone the massacre of Amritsar is not forgotten.'[1]

To enable him to discharge his special responsibilities and to carry out the functions committed to his discretion, the Governor-General is invested with certain special powers exercisable in his discretion. They are:

(*a*) the powers to arrest the course of discussion of measures in the legislature;
(*b*) the power to make rules of legislative business in so far as they are required to provide for the due exercise of his own powers and responsibilities;
(*c*) the power to make financial appropriations notwithstanding an adverse vote of the Legislature;
(*d*) the power to promulgate ordinances; and
(*e*) the power to enact Governor-General's Acts independently of, or contrary to the vote of, the Legislature.[2]

In addition to the above, the Governor-General is vested with plenary authority to meet situations where a breakdown of the constitutional machinery has occurred. Such a breakdown may be said to occur when the ministers commanding a large following in the Legislature resign; or when the Governor-General discharges any of his special responsibilities in opposition to their wishes and he finds it impossible even after a

[1] *The Political Quarterly*, July–September 1935.
[2] *Government of India Act*, sects. 35, 38, 40, 43, and 44.

dissolution to constitute an alternative ministry. If the Governor-General is satisfied that circumstances render it impossible for the government of the Federation to be carried on under the Act, he may issue a proclamation declaring that his functions shall, to such extent as is mentioned, be carried on at his discretion, and assuming to himself any powers exercisable by any Federal authority other than the Federal Court. Any proclamation may be modified or revoked by a subsequent proclamation; it must be laid before both Houses of Parliament, and shall cease to operate at the expiration of six months, unless both Houses of Parliament approve its continuance, in which case it shall remain in force for a further period of twelve months. But, if the government of the Federation is carried on for a period of three years by proclamation the Constitution shall be restored, with amendments, if any, which may be made by Parliament. Such amendments shall be subject to the restriction of Schedule II, as regards changes which may be made without affecting the accession of the States.[1]

It is thus obvious that the position of the Governor-General of the Indian Federation is by no means similar to that of the Governor-General of any of the other Federations within the British Empire. In all of them the functions of Governor-General are those of a 'rubber stamp'. 'He is politically a cypher; he holds a petty court and bids champagne to flow under his roof, receives civic addresses and makes flattering replies.' But in the Indian Federation, the Governor-General has been vested with real and substantive powers which are meant to be exercised. Grave fears were naturally entertained by all sections of Indian opinion lest the Governor-General and the provincial Governors should give narrow and legalistic interpretation of their powers. In this way the measure of responsibility conferred under the Act might be reduced to a shadow.

[1] *Government of India Act*, sect. 45.

Matters came to a head recently when the Congress leaders in the six Provinces in which they had obtained an absolute majority demanded an assurance from the Governors who invited them to form a ministry that they would not overrule their cabinets in the exercise of their special powers unless they were prepared to take the responsibility for dismissing the cabinets and, if necessary, dissolving the legislatures. This assurance was insisted upon as a safeguard against the Governor interfering light-heartedly with ministers on matters of little importance. It was argued that the Governor would be more reluctant to interfere if the obligation of dismissing the ministers was cast on him before he used his special powers, than if he were merely put to the possible necessity of having to face a situation arising out of the resignation of a dissatisfied ministry. It was said that in such conditions, the Governor would be less inclined to ignore the ministers' advice.

On the other side it was stated that the Governor could not, under the terms of the Act and the Instrument of Instructions, relieve himself of his special powers even if he wished to do so, and that it was therefore impossible to give the assurance demanded. On the Congress party refusing to accept office under such circumstances, *interim* ministries were constituted in all the six Provinces to carry on the King's Government, and the legislatures were not summoned at all, as these ministries, which had little or no following, were naturally afraid of facing them.

The political impasse thus created was not brought to an end until a clear and authoritative statement was made by the Viceroy explaining the relations which would prevail between the Governor and his ministers. He made it clear that the mere fact that the Government of India Act covered contingencies such as the dismissal of ministers, the breakdown of the Constitution or the like was not for one moment to be taken as involving an assumption that the framers of

the Act, those concerned with its administration or any one indeed who was concerned for the constitutional progress and development of India wished to see those contingencies turned into realities. The scope of such potential interference was strictly limited and defined and there was no foundation for any suggestion that a Governor was free, or was entitled, or would have the power to interfere with the day-to-day administration of a Province. The special responsibilities were, the Viceroy explained, restricted in scope to the narrowest limits possible. Limited even as they were, a Governor would at times be concerned to carry his ministers with him, while in other respects in the field of their ministerial responsibilities, it was mandatory on a Governor to be guided by the advice of his ministers, even though for any reason, he might not himself be wholly satisfied that that advice was in the circumstances necessarily and decisively the right advice. Within the limited area of his special responsibilities, if the Governor was unable to accept the advice of his ministers, then the responsibility for his decision was his and his alone, and ministers were entitled, if they so desired, publicly to state that they took no responsibility for that particular decision or even that they had advised the Governor in an opposite sense. As regards the point raised by the Congress leaders that in such cases of disagreement the Governor should dismiss the ministers, the Viceroy pointed out that if, on each such occasion, a Governor was required to dismiss his ministers without any reference to the magnitude or intrinsic importance of the issues involved, the position of the Governor and the ministers would become impossible and the interruption to administration and the loss of credit to the ministers would be intolerable. The Viceroy welcomed the suggestion of Mr. Gandhi that it was only when the issue between the Governor and the ministers constituted a serious disagreement that any question of the severing of their partnership

arose. Where such an issue arose, the Viceroy agreed that the ministry must either resign or be dismissed. As between resignation and dismissal, he opined that normal constitutional practice leaned very heavily indeed to the side of resignation, as it was more consistent with the self-respect of a ministry and was an effective public indication of the attitude of ministers towards the action of the Governor. If they did not resign and the Governor felt that his partnership with them could not continue it was open to the Governor to dismiss them. In no case would they have to bear, in the eyes of the public, responsibility for an exercise of special powers of which they disapproved.

This statement of the principles governing the relation of the Governor with his ministers coming from one, who as the Chairman of the Joint Parliamentary Committee is an unrivalled authority on the real intentions of Parliament and the meaning of the Act, has allayed all apprehensions and removed the deadlock. These principles apply *mutatis mutandis* to the relations of the Governor-General with his ministers, with the difference that the ministers will have no right to advise the Governor-General in matters connected with the Reserved departments.

Of the special responsibilities, the one which is of importance to the States is that of 'the protection of the rights of any Indian State and the rights and dignity of the ruler thereof'. The Governor-General is directed by his Instrument of Instructions to interpret this responsibility as 'requiring him to see that no action shall be taken by his ministers, and no Bill of the Federal Legislature shall become law, which would imperil the economic life of any State, or affect prejudicially any right of any State heretofore or hereafter recognized, whether derived from treaty, grant, usage, sufferance or otherwise, not being a right appertaining to a matter in respect to which, in virtue of the ruler's Instrument of Accession, the Federal Legislature may

make laws for his State and his subjects'.[1] A similar responsibility is laid on the Governors of the Provinces.

This special responsibility is not intended to apply to rights enjoyed by a State in matters falling within the federal field. Such matters, having been accepted by the State under its Instrument of Accession, will be dealt with in accordance with the normal provisions of the Act. It is intended, as expressly stated in the Instrument of Instructions, to cover any right 'not being a right appertaining to a matter in respect to which, in virtue of the ruler's Instrument of Accession, the Federal Legislature may make laws for his State and his subjects', that is to say, rights arising within the non-federal sphere. It may well be that measures proposed by the Federal Government, acting within its constitutional rights in relation to a federal subject, if pursued to a conclusion, might affect prejudicially rights of a State in relation to which the State has not federated. Or again events might arise in a Province which would tend to prejudice the rights of a neighbouring State, as for instance where large bodies of men belonging to a particular community or a particular mode of thought march from a Province to a neighbouring State to stir up trouble there, as happened recently in Kashmir and Alwar. This is no doubt an extreme case, but sometimes enactments passed *bona fide* and in a legitimate manner by a Provincial Legislature or by the Federal Legislature may seriously affect the rights of the States. For example the immunity now enjoyed by the rulers from the jurisdiction of courts in British India may be extinguished, and they may be made amenable to the jurisdiction of such courts by suitable amendments being made in the Indian Civil Procedure Code. In such cases the Governor-General or the Governor, as the case may be, is required by his special responsibility to ensure that the particular course of

[1] *Draft Instrument of Instructions*, art. 15.

action is so modified as to maintain the integrity of rights enjoyed by the State by treaty or otherwise.

The States may invoke the assistance of the Governor-General for the protection of such of their extra-territorial rights as fall within the non-federal sphere, whenever such rights are likely to be endangered by federal legislation. As pointed out in the last chapter, the States are in possession of extra-territorial rights of various kinds arising under treaties, agreements and existing British-Indian laws. The majority of these rights are purely personal in character, extending to the rulers, in recognition of their dignity and status, certain courtesy concessions like immunity from jurisdiction of courts in British India, exemption from British-Indian taxation and from the operation of the Indian Motor Vehicles Act, and certain minor concessions in respect of the acquisition by the rulers of residential and non-residential property in British India. The maintenance of such rights offers no difficulty and it would indeed be wholly unnecessary for the States to seek the aid of the Governor-General for their protection. The Federal Legislature may reasonably be expected to continue such concessions to the rulers. But there are certain rights the protection of which may cause great difficulties. For instance, many States are now entitled to procure without restriction supplies of alcoholic liquors, Indian hemp and narcotic drugs from the Provinces. The preservation of this right would make it impossible for any Province now supplying liquors to a State to introduce total prohibition within its territory. If a State insists on having its pound of flesh, the Province has no alternative but to go on supplying the State with liquors to the extent of the quantity now supplied to it, while keeping its own people dry. Similarly the Indian States Protection Act, which was passed in 1934, with the aid of the votes of official and nominated members, in opposition to the wishes of the elected members in the Assembly, protects the

Administrations of the States *inter alia* from illegitimate criticism in the press in British India. The States regard the Act as securing to them a valuable right, but public opinion in British India looks upon it as unduly curtailing the right of free discussion and expression of opinion in British India. If the Federal Ministry backed by a strong majority of British-Indian representatives is bent upon removing this restriction by repealing the Act, it would lead to a fierce controversy between the Provinces and the Princes and create a situation calling for the exercise of his special powers by the Governor-General.

The States are thus given a right to challenge any federal measures which are likely adversely to affect their rights, and the Governor-General is bound to take such steps as may be necessary for the protection of their rights. Any State may approach the Governor-General for protection if any of its rights is in danger, and so long as it can make out a case to the satisfaction of the Governor-General for such treatment it is bound to receive it. If, however, the Governor-General fails or neglects to extend such protection in any particular case the State has absolutely no remedy. It cannot institute legal proceedings against him to compel him to discharge his duty. The special responsibilities do not impose any legally enforceable duty on the Governor-General, but they are merely declaratory in their nature. They declare the purposes for the fulfilment of which he may act independently of his ministers and if necessary in opposition to their wishes; and the fact that in discharging such duties the Governor-General is required to exercise his 'individual judgement' places them in that category of duties which, being entirely discretionary and not ministerial, are legally unenforceable.

The direction given to the Governor-General under his Instrument of Instructions to protect the rights of the State is equally ineffective. There was considerable discussion on the

nature of the Instrument of Instructions in the Joint Parliamentary Committee when Sir Samuel Hoare was examined, and the late Lord Reading emphasized the point that the Instrument cannot empower a subject to bring any action in a court of law. The Instrument does not define or create any legal rights and obligations. It lays down the manner in which the Governor-General is to exercise the powers vested in him by the Act. And it is to the Crown and to Parliament alone, and not to the courts, that the Governor-General is accountable for any breach of his Instructions—an accountability which in the last resort could be enforced by his removal from office. This rule of law is given statutory form in the India Act where it is provided that the validity of anything done by the Governor-General shall not be called in question on the ground that it was done otherwise than in accordance with any Instrument of Instructions issued to him.[1]

Further the Act expressly provides that no proceedings whatsoever shall lie in, and no process whatsoever shall issue from, any court in India against the Governor-General or the Governor of a Province.[2] Consequently any State which feels aggrieved that its rights are jeopardized by the inaction of the Governor-General to fulfil his duty has no legal remedy whatsoever. It may lodge its complaint with the Secretary of State for India for what it is worth. The safeguard is political and not legal in nature, and its force depends, therefore, in the ultimate resort, upon the degree to which the Governor-General is able to resist the pressure upon him by his ministers.

As regards the administration of federal affairs, the Princes took up the position at the Round Table Conference that such administration should be conducted in the States only by State authorities. They considered it very derogatory to

[1] *Government of India Act*, sect. 13 (2).
[2] Ibid., sects. 3 and 6.

their sovereignty to allow federal officers to carry out federal functions within their States independently of their own control. They suggested, therefore, that the States would federate for purposes of 'policy' and 'legislation', reserving 'administration' to themselves. The Chamber of Princes formulated it as one of its 'important conditions' that 'the administration of federal matters shall rest solely with the States'. The Act does not make it obligatory on the Federal Government to carry out its purposes in a State only through the State administrative machinery. It provides, however, two methods by which a State may retain administration in its own hands.

Firstly, a ruler may, while specifying in his Instrument of Accession the matters on which the Federal Legislature may make laws for his State, specify also the limitations, if any, to which the executive authority of the Federation should be subject in his State.[1] The exercise of federal executive authority in such a case shall be subject to the limitation so specified.[2] By this method a ruler may, if he so desires, reserve executive authority to himself in whole or in part in respect of any or all of the subjects accepted by him. The net effect of such limitations is that the ruler would not be transferring any executive power at all to the Federation but would be reserving it absolutely to himself.

If such limitations are allowed to be made there would be a rigid separation within the federal sphere between legislative and executive powers, each being vested in a separate and independent authority. The Federal Legislature will have absolutely no control over the authority which executes its laws, viz. the State; and the States which administer federal laws will not be responsible for such administration to the authority which makes the laws, viz. the Federal Legislature. Such reservations militate against the principle

[1] *Government of India Act*, sect. 6 (2).
[2] Ibid. sect. 8 (1) (*c*).

enunciated by the Privy Council in a series of cases, viz. that executive power is co-extensive with legislative power; and if allowed to be made by the States would reduce the Federation to a mere legislative union.

That reservations of this kind would not be permitted was made clear by the Secretary of State for India in his evidence before the Joint Parliamentary Committee. Replying to Mr. Jayaker's question, whether it was permissible for any State to say that it federated in respect of any subject for legislation alone and not for purposes of administration, the Secretary of State observed: 'It might theoretically be possible for a State to make such a claim, but, in actual practice, the Crown would refuse an accession unless the accession was really upon a substantial basis.'[1]

Secondly, agreements may, and if provision has been made in that behalf in the Instrument of Accession shall, be made between the Governor-General and the ruler for the administration by the ruler himself and his officers of any federal law applying to the State. Any such agreement must contain provisions enabling the Governor-General in his discretion to satisfy himself, by inspection or otherwise, that the administration is carried out in accordance with the policy of the Federal Government and, if he is not satisfied, he may in his discretion issue such directions to the ruler as he thinks fit.[2]

While under the first method the ruler reserves executive power to himself absolutely, under the second method he transfers it to the Federal Government, which in its turn delegates to him administrative functions under strict federal supervision and control. The position is analogous to the delegation of powers by the central government to local authorities, which ordinarily takes place in any well-organized State under statutory rules and orders. The terms

[1] *Minutes of Evidence taken before the Joint Parliamentary Committee on Indian Constitutional Reform*, Question 13192.

[2] *Government of India Act*, sect. 125.

of the agreement are set out, in the first instance, in a Schedule to the Instrument of Accession, and one of the clauses of the Instrument provides that 'the ruler accedes to the Federation on the assurance that the said agreement will be executed'. The agreement embodying the terms will actually be executed later between the Governor-General and the ruler, after the inauguration of the Federation. The terms are not open to modification and further negotiation after they are scheduled to the Instrument, and the Governor-General has no option but to execute the agreement, for the accession of the State is expressly made conditional upon the execution of the agreement on those terms. The agreement when executed becomes a part of the Instrument of Accession and any dispute arising under it between the State and the Federation may be referred for decision to the Federal Court.[1]

In allowing provision to be made for such agreements His Majesty's Government will necessarily have to make some discrimination between States. It is obvious that not all the States can be allowed to administer federal matters, for many of them possess hardly any administrative machinery worth the name. His Majesty's Government will have to satisfy themselves that the State agency is really competent to carry out federal purposes. The right of administering federal matters and thus excluding federal officers from State territory is a privilege which cannot be extended to a State unless it can make out a strong case for such treatment by showing that its administrative machinery is run on sound and efficient lines. It was suggested to the Secretary of State before the Joint Parliamentary Committee that even in this matter some regard should be paid to the rank and dignity of the State as indicated by gun salutes, as has been done in the case of legislative representation. But he emphatically repudiated the suggestion and stated: 'An arrangement of

[1] *Government of India Act*, sect. 204.

that kind must be exclusively upon the merits of that particular case. Obviously, it would be necessary to take into account the efficiency of a particular case for carrying out particular duties. Obviously also, one would have to judge to a certain extent from past history and past experience.'[1]

Where administration is not retained by a State by either of the above two methods, the Federal Government is not bound to utilize State instrumentalities for the execution of its purposes within the State. Such utilization is optional with the Federal Government, which may appoint its own officers for the purpose or, if it finds it necessary and convenient to entrust such administration to the State, may do so by either of the two methods provided in the Act. Firstly, the Governor-General acting on the advice of his ministers may enter into an agreement with the ruler of a State for the carrying on conditionally or unconditionally of any federal function within his State.[2] Secondly, an Act of the Federal Legislature may confer powers and impose duties on the ruler or officers designated by him for the purpose. In such a case the costs of administration must be paid by the Federal Government, the sum being fixed in default of agreement by an arbitrator named by the Chief Justice of India.[3]

The Indian Federation presents in this respect one marked feature distinguishing it from those of the United States, the Commonwealth of Australia and Canada. In all of them the principle of the separation of powers is carried out completely in the distribution of functions between the central government and the units. A sharp line of demarcation has been drawn between their respective spheres of activities. Federal laws are executed by federal officers and there is no question of dependence of the central government on the governments

[1] *Minutes of Evidence taken before the Joint Parliamentary Committee on Indian Constitutional Reform*, Question 12947.
[2] *Government of India Act*, sect. 124 (1).
[3] Ibid., sects. 124 (3) and (4).

of the units for the execution of any of its purposes. To this rule there are but a few unimportant exceptions, the machinery of the state being utilized for federal elections, for naturalization and for carrying out measures of quarantine. This system is not, however, an essential characteristic of federation. In Switzerland, Imperial Germany, and in the German Republic the opposite method found favour: in principle, the execution of federal laws is left to the units and only for special purposes have federal services been organized. The Indian Federation is of the type represented by the latter three federations, its general scheme being to entrust federal administration to the units. Leaving out of account the method of absolute reservation of executive powers, discussed above, which as stated by the Secretary of State for India is only of theoretical interest, a delegation of administrative functions may be made to the State-members by one of the three methods discussed above, viz. (1) by an agreement made under the Instrument of Accession, (2) by an agreement negotiated and concluded between the Governor-General and the ruler and (3) by an Act of the Federal Legislature.

Whichever of the three methods may be adopted for entrusting federal administration to the States, they may reasonably be expected to conduct it in an efficient and satisfactory manner. The Federal Government has also ample power to ensure that there is no maladministration of federal powers by any State to which powers are delegated under arrangements (2) and (3). If such maladministration occurs where a ruler exercises federal functions under an agreement with the Governor-General, the agreement may be cancelled and the functions resumed by the Federal Government, which may appoint its own officers to exercise them in the State. If the unsatisfactory administration arises where an Act of the Federal Legislature has conferred powers on the ruler and his officials, the powers may similarly be resumed, if

provision for such resumption is made in the Act, and if there is no such provision a subsequent enactment may be passed for the purpose. Or the Federal Act may be so framed as to make the State officials fully responsible to the Federal Government and liable to its control for the exercise of the powers conferred on them. The powers of the Federal Legislature, while acting within the scope of its authority, are plenary and it may attach sufficient sanctions to enforce obedience to its laws. Thus where a State entrusted with the task of levying and collecting the federal corporation tax makes any default, the Federal Government may take such coercive steps against the State as it deems fit. It may confiscate the revenues of the State as was done recently by the Commonwealth Government to recover its debt from the defaulting State of New South Wales.

As regards cases where federal administration is delegated to the States by virtue of agreements made in accordance with the Instruments of Accession, the powers of the Federal Government to secure that such administration is carried out on right and efficient lines are not so wide as under the two arrangements discussed above. In such cases the nature and extent of the powers exercisable by the Federal Government are regulated by the terms of the agreement from which such powers are derived. The Act makes it mandatory that every such agreement should contain provision enabling the Governor-General to satisfy himself by inspection or otherwise that the administration is carried on properly and, if he is not so satisfied, to give such directions as he deems fit. In the absence of any other provision in the agreement giving a larger measure of control, the powers of the Governor-General are strictly limited to inspection and direction—powers which are similar to those exercised by the Central Governments in Imperial Germany and in the Weimar Constitution. The specific methods of supervision adopted in both those constitutions, may be enumerated as follows:

1. General instructions issued by the Federal Government for the observance by the State Government in the execution of federal law.

2. The sending by the Federal Government of supervisory commissions or commissioners to the central government organs of the States and, with the latter's consent, to their subordinate organs.

3. The conducting of investigations, examination of witnesses, inspection of State documents by the Federal Commissioners or their officials designated by the Federal Government.

4. The requesting by the Federal Government that any defects discovered in the administration of a federal law should be corrected, followed in cases of non-compliance by federal execution.[1]

The same methods may perhaps be followed in the Indian Federation also. It is to be noted that the powers of inspection and direction are exercisable by the Governor-General acting in his discretion, that is to say, independently of his ministers. The Secretary of State for India was examined at length before the Joint Parliamentary Committee, as to how such an arrangement was reconcilable with the responsibility of the Federal Executive to the Legislature for federal administration, and why the Governor-General should not act on the advice of his ministers in giving directions to a State. The only answer that he could give was that the Governor-General acting in his discretion was more likely to have influence with the States than the Governor-General acting on the advice of his ministers.[2]

The rulers of States are under an obligation to allow federal officers appointed by the Governor-General to carry out inspections within their territory and to give effect to the directions which the Governor-General may give the rulers for remedying any defects in federal administration which such inspection might bring to light. If a ruler, however, disregards the directions given to him and persists in administer-

[1] *Constitutional Jurisprudence of the German Republic*, pp. 219–20.

[2] *Minutes of Evidence taken before the Joint Parliamentary Committee on Indian Constitutional Reform*, Question 13081.

ing federal affairs in his own way, the Act provides no constitutional procedure for enforcing his obedience to such directions. In Imperial Germany and in the Weimar Constitution such 'requests' for the correction of defects were followed in cases of non-compliance by federal execution. In India, however, there is no question of any federal execution in the sense of 'marching an army' into the State. Recourse must be had in the last resort to paramountcy. The Governor-General will have to travel outside the Constitution and request the Crown Representative to use his good offices to bring about the ruler's compliance with the directions.

This extraordinary procedure may very well be avoided by making provision in the agreement itself securing to the Federal Government larger powers of control than those of mere inspection and direction. Provision may be made empowering federal inspecting officers to interfere directly and correct any defects which they may discover in the conduct of federal administration in a State. This method was suggested for adoption by Lord Reading to the Secretary of State for India in the Joint Parliamentary Committee.[1] In the alternative, provision may be made for the cancellation of the agreement in the event of the ruler's failure to carry out the directions of the Governor-General and for the resumption by the Federal Government of the functions delegated. The Princes cannot in reason object to the inclusion of these terms, for in so far as they exercise federal functions they become subordinate executive organs of the Federal Government, and it is essential therefore that the Federal Government should be vested with full powers to ensure that its purposes are executed properly and in accordance with its policy. If the Princes are not prepared to consent to such terms the privilege of conducting federal administration should not be granted to them at all.

[1] *Minutes of Evidence taken before the Joint Parliamentary Committee on Indian Constitutional Reform*, Question 12838.

One other obligation of a far-reaching character is imposed on the States. It is laid down that the executive authority of every federated State shall be so exercised as not to impede or prejudice the exercise of the executive authority of the Federation so far as it is exercisable in the State by virtue of a law of the Federal Legislature which applies therein. If it appears to the Governor-General that the ruler of any federated State has in any way failed to fulfil this obligation, he may, acting in his discretion, after considering any representations made to him by the ruler, issue such directions to the ruler as he thinks fit.[1]

This provision is intended to ensure that the exercise of Federal Executive authority in a State is not interfered with by the ruler and his officers. It may well be that federal officers, or even State officers entrusted with federal functions, may be obstructed in carrying out their functions by the ruler and the authorities subordinate to him. This is no doubt an extreme case. But even where a State exercises its powers in the non-federal sphere in a legitimate and normal manner it may at times prejudice or impede the administration of federal affairs. Thus the manner in which a State carries on its public health and sanitation arrangements may interfere with the arrangements regarded as essential by the Federal Government for the maintenance of quarantine in ports and for the administration of cantonments. Similarly, the system of licensing and controlling motor traffic in a State might seriously prejudice the interests of federal railways. An obligation is therefore laid on the ruler not to exercise his powers in such a manner as to prejudice federal administration in his State, and the Governor-General also is empowered to give such directions as he deems fit to secure that no such prejudice arises. The precise limits of this obligation and the corresponding right of the Governor-General to give directions are not clear. But their practical

[1] *Government of India Act*, sect. 128 (1).

effect is that the Governor-General is given wide powers of interference in the internal administration of the State, provided he is satisfied that such interference is essential for the conduct of federal administration in the State. In the two illustrations given above, the Governor-General might very well give directions to the ruler as to the manner in which public health and sanitation arrangements and the regulation of road traffic should be conducted in the State.

It is true that the Act provides that if any question arises as to whether the Federal Executive authority is exercisable in a State and the extent to which it is exercisable, the question may at the instance of either the Federation or the ruler, be referred to the Federal Court. This makes it possible to obtain the decision of the Court as to whether federal executive authority, extended, in the above illustrations, to Railways and Quarantine. But when it is decided that such authority is exercisable, by reason of Railways and Quarantine having been accepted by the State under its Instrument, the directions given by the Governor-General cannot be challenged on the ground that they encroach upon the internal administration of the State, and the ruler is bound to give effect to them.

Here again there are no constitutional sanctions for ensuring compliance with the directions of the Governor-General. But the fact that the Viceroy of India fulfils a dual role and that consequently he could take action in his capacity as Crown Representative, to enforce the directions given by him in his other capacity as Governor-General, may safely be assumed to be a sufficient safeguard against the rulers taking up a recalcitrant attitude.

CHAPTER V

FEDERAL FINANCE

NONE of the proposals relating to the new constitution was discussed so much or referred for consideration and investigation to so many Committees as those pertaining to the financial relations of the Centre and the units. As the Joint Parliamentary Committee observed in their Report: 'The problem of the allocation of resources is necessarily one of difficulty since two different authorities (the Government of the Federation and the Government of the Unit), each with independent powers, are raising money from the same body of taxpayers.'[1] In addition there were several other difficulties peculiar to the Indian Federation arising from historical reasons; these had to be cleared out of the way before a scheme of Federal Finance satisfactory to all the interests concerned could be successfully evolved.

The States recognized at the outset the principle that the Federal Government should be equipped with resources adequate to enable it to discharge the functions entrusted to it. But they urged that in view of the fact that some of the federal expenditure would be incurred purely for British-Indian purposes, the Provinces should allocate larger resources to the Federation than they themselves were called upon to do. One such expenditure was in connexion with the service of part of the pre-Federation debt. The total public debt of the Government of India at the time of the Second Round Table Conference amounted roughly to Rs.1,173 crores, of

[1] *Report of the Joint Parliamentary Committee on Indian Constitutional Reform*, para. 244.

which Rs. 1,001 crores were 'asset-covered debt': that is to say, debt for the service of which there were interest-yielding and liquid assets, which the Federal Government could have no difficulty in taking over; and Rs. 172 crores which were not covered by any such asset (this has now increased to Rs. 198 crores). The interest and sinking-fund charges of this uncovered debt were computed at the time to cost the Federal Government Rs.9.7 crores annually, and the States urged that this burden should fall only on the Provinces, as the States had derived no benefit whatsoever from such debts. Another such expenditure was the pre-Federation civil pension charges for services rendered in British India, which were computed by the Percy Committee to cost the Federation something like Rs.80 or Rs.90 lakhs per annum. Another item was with regard to the grants in aid proposed to be given to the Provinces under the new Constitution. The States contended that each Province should limit its expenditure within its resources; that if this was not found to be practicable and it became necessary to give subventions either to the then existing Provinces or to the new insolvent Provinces, which were proposed to be set up to cater to local sentiment, such subventions should be given at the expense of the British-Indian taxpayer.

The States suggested that their share of the federal expenditure would be fully covered by the proceeds of customs and excise duties and duties on salt, to which they were already contributing and that the resources of the Federation should, therefore, be confined to indirect taxes so far as the State-members of the Federation were concerned.

On the other side, it was argued that if the Federal Government assumed liability for the whole of the pre-Federation debt, its obligations would be fully covered by the assets taken over and that there was no reason why the Provinces should contribute more than the States to the

federal fisc. The Provinces claimed that if only indirect taxes were allocated to the Federation as suggested by the States, the proceeds of income-tax which was levied and collected only in the Provinces should not be retained by the Federation, but should be distributed among them.

After much discussion and investigation by special committees, it was finally agreed to abandon the distinction between burdens which should fall on British India alone and those which ought to fall on the Federation proper. To meet that part of the federal expenditure which might be said to be incurred for British-Indian purposes, it was decided that the Federation should retain a share of the proceeds of income-tax collected in the Provinces and distribute only the balance among them. The States' representatives insisted at the third Round Table Conference that the share thus allocated should be such as to yield to the Federation annually an amount of not less than Rs.8¼ crores. On the assumption that such a share would be secured to the Federation, the States' representatives on their part agreed to make further concessions by assigning to the Federation two more taxes, viz. Corporation tax and Surcharge on income-tax, in addition to indirect taxes.[1] This scheme was considered by the Joint Parliamentary Committee as not likely to result in 'any disequilibrium between the Provinces and the States'.[2]

The sources of revenue which were thus finally agreed to be allocated exclusively to the Federation, in addition to profits of currency and gains of Federal enterprises like Railways, Posts, and Telegraphs, were: (1) Customs duties, (2) Duty on salt, (3) Excise, (4) Corporation tax, (5) Surcharge on Taxes on Income, and (6) a fixed percentage of the receipts of income-tax collected in British India. The Act embodies this agreement, and the States are invited to

[1] *Second Peel Committee Report* (1932), para. 4.
[2] *Report of the Joint Parliamentary Committee on Indian Constitutional Reform*, para. 249.

surrender the first five heads, each of which may be briefly noticed.

1. *Customs duties*: All the States, with the exception of Travancore, Cochin and other maritime States in Kathiawar, are already contributing to Central Revenues under the head of Customs. The average annual revenue of the Government of India from import and export duties is about Rs.41.5 crores and of this nearly Rs.6 crores is derived from the States. The subjects of these States pay the sea customs duties on articles imported by them in exactly the same manner as the people in the Provinces. The incidence of the customs duties falls upon the consumers in the States and the consumers in the Provinces alike. So long as the duties were on a low level there was no substantial grievance. With the continued rise in the level of the import duties since 1921–2 the States had pressed more and more for a refund of the amount collected from their people. The question was becoming one of formidable difficulty and was recognized as such in the report of the Indian States Committee, presided over by Sir Harcourt Butler. The Committee considered that the States had 'a strong claim to some relief'. They came to the conclusion that the ideal solution would be a customs union combined with the abolition of internal customs in the States themselves; and during Lord Reading's Viceroyalty a suggestion for such a 'Zollverein' was actually drawn up but not put forward.[1] With their entry into the Federation the inland States will be surrendering their claim to a separate share in the proceeds of customs duties, and as the Joint Parliamentary Committee point out, this 'removes, indeed, one very serious problem'.[2]

As regards the maritime States, however, which number in all about a dozen, the position is quite different. Some of

[1] *Indian States Committee Report*, paras. 82 and 83.
[2] *Report of the Joint Parliamentary Committee on Indian Constitutional Reform*, para. 247.

them have developed their ports at great cost and are levying duties on articles imported through their ports in the same manner as the Government of India does at the British-Indian ports. The revenue derived from such duties forms an important part of their total revenues. Further, a few of the maritime States like Bhavanagar are in possession of treaty rights, which, by establishing free trade between the States concerned and British India, enable them to levy import duties on articles consumed even in the neighbouring British districts. That such treaty rights should be respected and that they should not be allowed to be affected by the accession of the States concerned was recognized in the early stages of the discussions at the Round Table Conference. The first Peel Committee gave it as their considered opinion that it was impossible to deprive the States of revenue of which they were already in possession and that the treaties or agreements must be taken as they stand.[1]

But later this view seems to have been modified. The Indian States Inquiry Committee suggested that the maritime States should be allowed to retain on their accession to the Federation only the value of the goods imported through their ports for consumption by their own subjects.[2] The Joint Parliamentary Committee were of the same opinion and observed: 'The general principle which we should like to see applied in the case of maritime States which have a right to levy sea customs is that they should be allowed to retain only so much of the customs duties which they collect as is properly attributable to dutiable goods consumed in their own State; but we recognize that treaty rights may not make it possible in all cases to attain this ideal. But if insistence upon treaty or other rights in any particular case makes such an arrangement (perhaps with certain adjustments or modifications) impossible, then it seems to us that

[1] *Federal Finance Committee Report* (1931), para. 20.
[2] *Indian States Inquiry Committee Report*, para. 382.

the question will have to be seriously considered whether the State could properly be admitted to the Federal System.'[1]

Revised agreements have since then been concluded between the Government of India and the maritime States of Kathiawar, with the exception of the State of Bhavanagar. The main object of these agreements is to prevent, with due regard for the rights and interests of the States, the development of uneconomic practices leading to the diversion of trade from its natural channels and to ensure that all goods imported at the States' ports are effectively subjected to customs duty at full British-Indian tariff rates. As regards the revenue derived from the duties levied on goods consigned to destinations outside Kathiawar, the settlement proceeds on the basis of the Dunedin Award. The issues arising out of the Nawanagar State's protest in 1927 against the re-imposition of the Viramgaum Line had been referred, with the consent of the parties, to a Court of Arbitration consisting of Lord Dunedin, as sole member, with a request to report the result of his investigations to the Governor-General. Lord Dunedin held that Nawanagar was entitled to a share in the customs collected at its ports on goods destined for British India, the Governor-General being left to determine the share. The Arbitrator's finding was accepted by the Governor-General, and under the revised agreement Nawanagar was allowed to retain from 1 April, 1934, the customs duty on goods passing outside the limits of Kathiawar up to a maximum of Rs.5 lakhs per annum, any balance over and above this amount being paid to the Government of India.

The principle of the Dunedin Award has been embodied in the revised agreements concluded with the States of Junagadh, Porbander and Morvi, under which these States are entitled to retain the customs duty not only on goods imported at their ports and consumed in their own territory,

[1] *Report of the Joint Parliamentary Committee on Indian Constitutional Reform*, para. 265.

but also in the territories of the adjacent non-maritime States. With regard to the State of Baroda, however, a settlement on a different basis has been concluded by which the State is entitled to retain the revenue from all goods imported at its ports and consumed only within its own territory. No settlement has yet been reached with the State of Bhavanagar, which claims to stand on a different footing altogether, in that no check could be placed on goods imported at its ports in transmission to British India.

As regards the two maritime States of South India, viz. Travancore and Cochin, the long-standing dispute with regard to the port of Cochin has been finally settled after a good deal of discussion and negotiation. A new settlement for the allocation of the revenue was arrived at in November 1934 and is now in operation. According to this settlement, if the aggregate net customs revenue does not exceed Rs.49½ lakhs, the share of Travancore, Cochin and the Government of India will each be one-third, i.e. Rs.16½ lakhs; if the aggregate net revenue be above Rs.49½ lakhs but less than Rs.61½ lakhs, Travancore will get only Rs.16½ lakhs, Cochin one-third of the revenue and the Government of India the remainder; if the aggregate revenue rises to Rs.61½ lakhs, Travancore will receive Rs.16½ lakhs, Cochin Rs.20½ lakhs and the Government of India the balance.

2. *Duty on Salt:* As regards this head also, the States, with the exception of the salt-producing States in Kathiawar and Rajputana, are already contributing to Central revenues in the same manner as the Provinces. Salt has been the subject of taxation in India for a very long time, and the principle of a salt duty may be said to have been inherited by the British Government from the Moghal Empire. All salt production is a monopoly of the Government of India in the sense that all salt works are either worked by it directly or by licensees under its strict control. This monopoly together with the system of collecting the excise duty at the sources

of production ensures that the whole population of India, whether resident in British India or in the States (with the exception of the salt-producing States) pays a salt tax at the rate from time to time in force in British India. The average annual revenue of the Government of India from the salt duty is about Rs.6 crores, of which more than a crore is contributed by the States. Here again the States had for some time past been advancing a claim for a refund of their share of the proceeds of this duty, but their accession to the Federation extinguishes this claim.

3. *Excise:* Duties of excise on tobacco and other goods manufactured in India (except alcoholic liquors, opium and medicinal or toilet preparations containing alcohol) are a federal source of revenue.

The general attitude of the States with regard to finance was defined to Sir Akbar Hydari in a statement made by him on behalf of the States' Delegation before the Joint Parliamentary Committee. He made it clear that the States were prepared to enter the Federation on the basis of the *status quo* at the time of their accession, the principle underlying being that accession of the State to the Federation should not dislocate the finances of the State by demanding from it any surrender of its existing revenues.[1] This principle is quite reasonable and no exception has been taken to it. In fact it has been recognized and affirmed more than once by some of the subsequent committees. The Peel Committee emphatically laid it down that it is 'impossible for the States in question to surrender, either immediately or in the near future, large sources of existing revenue, without the acquisition of fresh resources'.[2] The Joint Parliamentary Committee also recognized that 'it is impossible to deprive States of revenue upon which they depend for balancing their budgets'.[3] If

[1] *Minutes of Evidence taken before the Joint Parliamentary Committee*, Question 8023.
[2] *Peel Committee Report* (1931), para. 11.
[3] *Joint Parliamentary Committee Report*, para. 264.

accession to the Federation is to leave the States poorer than they would otherwise be and render it difficult for them to make both ends meet, then such accession is hardly worth their while.

The application of this principle to excise duties implies that the States are entitled to retain such of the excises as are now being levied by them, surrendering all prospective excises to the Federation. There are three excises which are at present levied by some of the States. Firstly, there is the excise on tobacco which is levied by a few States like Travancore. Secondly, a duty on matches is imposed by some other States under an arrangement with the Government of India. When in 1934 the Government of India proposed to levy an excise on matches, the need for enlisting the active co-operation of the States in the matter was keenly felt by it. It was realized that it was impossible to work the duty in British India effectively unless it was extended throughout India, as it was easy to shift the manufacture of matches from British India to the States and easier still to smuggle matches from the States to British India. The Government of India, therefore, entered into an agreement with the States by which every State in which matches were manufactured was to impose a corresponding duty within its territory and pay the proceeds into a common pool along with the proceeds of the British-Indian tax. The whole amount of the pool was then to be divided on an estimated consumption basis between British India and the States which agreed to the arrangement. The third excise is that on sugar. In 1934 when a duty on sugar was levied in British India, the States were invited to impose a corresponding duty for their own benefit on sugar produced within their territories. The sugar-producing States responded to this invitation and have been levying a duty within their territories at the same rates as that imposed in British India and appropriating the proceeds for their own purposes.

Proposals for the retention of the entire proceeds of the sugar duty by a State may perhaps be objected to on the principle that no unit of a federation should retain the proceeds of an excise duty arising from consumption beyond its own boundaries. But this principle does not seem to have been countenanced by the India Act itself. Section 140 which provides for the distribution of proceeds of excise duties to the units does not expressly lay down that such distribution should be on the basis of consumption. The Peel Committee had suggested that the Constitution itself should lay down the basis on which the federal surplus, if any, should be distributed among the units, and the Percy Committee had recommended that such basis should be that of population.[1] The Act, however, leaves it entirely to the discretion of the Federal Legislature to carry out the distribution in such manner as it pleases, thereby enabling it to distribute the proceeds on any basis, which might quite conceivably be other than that of consumption. It may also be stated here that strict principles of federalism, however good and desirable in themselves, have not been followed in framing the general scheme of the Indian Federation. The Joint Parliamentary Committee considered that it was greatly to be desired that the States should accept the principle of internal freedom of trade in India, and that internal customs barriers were inconsistent with the freedom of intercourse of a fully developed federation. All the same they recognized that many States derive substantial revenues from customs duties levied at their frontiers, and that it is impossible to deprive such States of revenue upon which they depend to balance their budgets.[2] The same considerations apply with equal force to the duty on sugar. The sugar industry has been developed by some States at

[1] *First Peel Committee Report*, para. 14, and *Percy Committee Report*, para. 115.

[2] *Report of the Joint Parliamentary Committee on Indian Constitutional Reform*, para. 264.

great expense, and such States should not be deprived, by the application of principles which are practically ignored by the Act, of any financial benefits accruing to them by reason of such development.

While reserving the above three excises, it is necessary at the same time for the States concerned to insert a specific clause in their Instrument of Accession making it obligatory on the Federation to continue the present arrangement for the division of the proceeds of the match duty. In the absence of such a clause it may well be that the present arrangement may be terminated by the Federation retaining the States' share. The Act no doubt makes provision for such distribution by laying down that the proceeds of any excise duty shall be distributed, if an Act of Federal Legislature so provides, among the Provinces and the States in accordance with such principles of distribution as may be formulated by the Act.[1] But this provision does not make it obligatory on the Federal Legislature to carry out the distribution but leaves it entirely to its discretion. It is moreover not legally enforceable, for it is a well-known principle of law that no legislature can be compelled to pass any particular enactment.

It is interesting to note here what effect has been given to similar provisions in other Constitutions and how far they have been held to be enforceable. The Commonwealth of Australia Act provided that the unspent 'Federal fourth' of revenue derived from customs and excise at the end of each year 'shall be paid to the several States'. This provision, generally known as the 'Braddon blot', after Sir E. Braddon who had suggested it, was very unpopular as it placed the Commonwealth Government in a burdensome position. In the Surplus Revenue Act, 1908, an ingenious device was adopted to put an end to the automatic handing over each year of the surplus, by arranging for trust funds, payments

[1] *Government of India Act*, sect. 140.

to which should be deemed appropriations, though the money was not actually going to be spent in the financial year. Thus, in effect, the Commonwealth Government was enabled to accumulate funds for the important expenditure on defence and public works looming before it and defeat the policy of handing over the surplus to the States. The State of New South Wales challenged this procedure and claimed that the actual balance over all expenditure should be distributed among the States, and that the appropriations made by the Commonwealth Government to the trust funds were not expenditure. The High Court ruled out this claim, one of the judges observing that 'the decision of Parliament that money will be required for expenditure is not a decision which the judicial department should review'.[1]

4. *Corporation tax:* The next source of revenue which the States are asked to surrender to the Federation is corporation tax, which is a tax on the profits of companies. In British India and in a few States the profits of companies are subjected to two kinds of taxes. The first is income-tax proper at a maximum rate, and the second is a super-tax at a flat rate. The former is the normal levy on the gains of business to which corporations, equally with individuals and firms, are subject; while the latter is a levy of a special character in view of the privileges which companies enjoy by statute in the shape of corporate finance and limited liability. It was the second kind of tax, viz. the present super-tax on companies, that was agreed to be allocated to the Federation.

The Federal Finance Committee presided over by Lord Eustace Percy found it rather difficult to give an exact definition of corporation tax. They confessed their inability to devise any definition appropriate to a permanent constitution except the wide one of a tax on the profits of companies which would obviously include both kinds of taxes, viz.

[1] per Higgins in *New South Wales* v. *The Commonwealth*, 7 C.L.R., p. 205.

income-tax and super-tax.[1] The Act, however, defines corporation tax as meaning 'any tax on so much of the income of companies as does not represent agricultural income, being a tax to which the enactments requiring or authorizing companies to make deductions in respect of income-tax, from payments of interest or dividends, or from other payments representing a distribution of profits, have no application'.[2] This definition is somewhat involved. It would have been better to have followed the definition given in the Indian Income-Tax Act and defined the tax as 'an additional duty of income-tax' on the profits of companies. The definition, however, seems to square with the present super-tax on companies which alone was intended to be federalized.

The tax will not be levied in the States from the very beginning, but only after the expiry of ten years from the date of the establishment of the Federation. The States' representatives at the Round Table Conference agreed to assume liability for this tax subject to the understanding that, the assessment of the tax on the companies in a State having been made, the State might raise the amount due to the federal fisc by any method it might choose, and not necessarily by the actual levy of that tax. The Act accordingly provides that the law imposing corporation tax shall contain provisions enabling the ruler of a State, if he does not desire the tax to be collected directly by the Federal Government in his State, to make a contribution equivalent as near as may be to the net proceeds which it is estimated would result from the tax if it were levied by the Federal Government. If the ruler elects to make a contribution in lieu of a direct levy by the Federal Government, the officers of the Federation shall not call for any information or returns from any corporation in the State, but the ruler must supply

[1] *Federal Finance Committee Report* (1931), para. 61. *Percy Committee Report*, para. 61.

[2] *Government of India Act*, sect. 311 (2)

to the Auditor-General of India such information as he may require for the determination of the amount of such contribution. If the ruler is dissatisfied with the amount fixed by the Auditor-General he may appeal to the Federal Court which may reduce the amount if it is considered to be excessive. No further appeal is to lie from the decision of the Court.[1]

Some of the States were rather reluctant at the discussions at the Round Table Conference to agree to the proposal that corporation tax should be a federal source of revenue. The Chamber of Princes laid it down as one of their essential conditions that no direct tax or levy of any kind including corporation tax should be imposed by the Federal Government within the States or on the subjects of the States. Similarly, the State of Kashmir emphatically declared in its Memorandum, presented to the Joint Parliamentary Committee, that it would under no circumstances agree to the levy of corporation tax.

The tax has now been incorporated in the India Act as a federal source of revenue, and any claim for its non-acceptance by a State is hardly likely to meet with the approval of His Majesty's Government. Such a claim could find no support in the Hydari statement that the States would join the Federation on the basis of the *status quo*. For most of the States are not levying this tax at present, and its acceptance by them would make no difference to their budgetary position. The same cannot, however, be said of a few States like Mysore and Patiala, which have been levying a corporation tax of their own, and deriving a substantial revenue from it. The unconditional acceptance of the change by such States would mean a reduction in their present revenues; amounting in the case of Mysore to as much as Rs.8 lakhs. It is but proper, therefore, that such States should be allowed to make some reservation preserving at least the revenue accruing to them at the time when the tax comes to be levied

[1] *Government of India Act*, sect. 139.

by the Federation. That some exception should be made for such States was recognized in the discussions of the Round Table Conference. The first Peel Committee (1931), which recommended the federalization of corporation tax, definitely stated that special adjustments would be necessary in the case of States which already levied taxes like corporation tax and tobacco excise to bring them into line with the Federation.[1] Similarly, the Secretary of State for India also recognized the need to allow such States to make reservations, and distinctly stated in the Memorandum which accompanied his telegraphic dispatch of 14 March 1935 to the Government of India, that 'any conditions with regard to the acceptance of corporation tax would be considered in connexion with negotiations for accession'.

5. *Surcharge on Income-Tax:* The Federal Legislature is empowered to levy a surcharge on income-tax in the Provinces, in which case the States are bound to make a contribution to the revenues of the Federation.[2] The item of surcharge is not, however, enumerated in the Federal Legislative List, but as the States have agreed to assume liability for this tax, they are expected to specify it as an additional matter with respect to which the Federal Legislature may make laws for the States.

The power of levying surcharge is hedged round by conditions so as to secure that it is not exercised ordinarily, but resorted to only in times of financial stress. Any bill imposing a surcharge cannot be introduced in the Federal Legislature without the previous consent of the Governor-General who is bound to satisfy himself before giving such consent that an emergency of a financial character has arisen.

The conditions under which alone an emergency should be taken to have arisen were stated by Sir Akbar Hydari in his statement, on behalf of the States' Delegation, as follows:

[1] *Peel Committee Report* (1932), para. 11.
[2] *Government of India Act*, sect. 138.

'If at any time even during the period of the first ten years the financial position becomes such that the federal expenditure cannot be met from the sources of revenue permissible to the Federal Government, (1) after all possible economies have been affected, (2) the resources of indirect taxation open to the Federation exhausted, and (3) the return of the proceeds of income-tax to the Provinces suspended, a state of emergency will be held to have come into being, when all federal units will make contributions to the federal fisc on an equitable and prescribed basis.'[1] These conditions were inspired by the fear that the expedient of levying a surcharge might be freely resorted to even in normal times to carry out the programme of the payment of the proceeds of income-tax to the Provinces and the States thus taxed for the benefit of British India. These conditions, which were regarded by the Joint Parliamentary Committee 'as not unreasonable', are embodied in the India Act. The Governor-General is required, before giving his consent to the introduction of a Bill imposing a surcharge, to satisfy himself 'that all practicable economies and all practicable measures for otherwise increasing the proceeds of federal taxation or the portion thereof retainable by the Federation would not result in the balancing of federal receipts and expenditure'.[2]

The Act, however, makes a serious omission with regard to the assessment of the contribution. It provides that when a surcharge is levied in the Provinces, the States should make a contribution 'assessed on such basis as may be prescribed with a view to securing that the contribution shall be equivalent, as near as may be, to the net proceeds which it is estimated would result from the surcharge if it were leviable in that State'. But no provision is made for the settlement of disputes which might arise with regard to the amount of contribution fixed. The possibility of the occurrence of such

[1] *Minutes of Evidence taken before the Joint Parliamentary Committee on Indian Constitutional Reform*, Question 8023.

[2] *Government of India Act*, sect. 141 (2).

disputes is recognized in the case of contributions under Corporation Tax, and provision is made for referring them to the Federal Court for settlement. This omission should be rectified by the States by inserting a similar provision in their instruments of Accession. Otherwise the amount of the contribution fixed by the Federal Government, however excessive it might be, will be final and binding on the States.

Further, the Act has not implemented one or two understandings which were arrived at at the Round Table Conference with regard to the liability of the States for the payment of this tax. One such understanding was that if at the time when the Constitution came into force any portion of the special surcharges on taxes on income imposed in September 1931 was still in operation, it should be taken as a federal surcharge but without liability on federating States to make any equivalent contribution.[1]

This understanding is not embodied in the Act. In 1931 a surcharge of 25 per cent. was imposed on income-tax in British India as an emergency measure, and though the rate has since then been reduced it still stands at $8\frac{1}{3}$ per cent. The maintenance of this remaining surcharge was regarded by Sir Otto Niemeyer as essential for the early distribution of income-tax receipts to the Provinces.[2] It may, therefore, be reasonably assumed that this surcharge will continue to remain in force at the time of the establishment of the Federation. The States become liable immediately on their accession to make a proportionate contribution as their counterpart of this tax unless they rectify the omission of the Act by inserting a provision in the Instrument of Accession exempting themselves from such payment. A similar provision must be made by the tributary States to give effect to the recommendation of the Peel Committee that tributes

[1] *Proposals for Indian Constitutional Reform*, Proposals, para. 141.
[2] *Indian Financial Inquiry Report*, para. 31.

must be taken in reduction of any contribution which the States may be called upon to make in times of emergency.[1]

There remains one other matter in respect of which also the States must make a reservation. The Act confers an exemption from federal taxation on certain classes of income accruing to the units. Income earned by a Provincial Government by engaging in trade or business within its own territory is exempted from such taxation. But the same exemption is not extended to trade profits earned by a State within its territory.[2] This omission is of no consequence so far as income-tax is concerned as the States are not federating on that matter. Federal enactments levying income-tax will not apply to them, and it is not possible therefore to subject such profits to federal income-tax. But as regards surcharge this omission may have serious consequences. The States are accepting surcharge as a federal subject, and in the absence of an exemption corresponding to the one conferred on the Provinces, they become liable to pay the federal surcharge on trade profits earned by them within their respective territories. The income of a State arising from the working of Railways, Posts, and Telegraphs and the supply of Power might be regarded as profits derived from undertakings of a commercial nature and assessed to the federal surcharge. In this way a good portion of the revenues of a State might be brought under federal taxation. The States should guard themselves against such a possibility by making a provision in their Instruments exempting their trade profits from being taken into account in fixing the amount of their contributions.

6. *Taxes on Income:* The next item of federal revenue is a fixed share in the proceeds of income-tax realized in the Provinces. According to the India Act taxes on income other than agricultural income are to be levied and collected by the Federation. From the proceeds thereof the yield repre-

[1] *Peel Committee Report* (1932), para. 26.
[2] *Government of India Act*, sect. 155.

senting those derived from Chief Commissioners' Provinces and from emoluments paid to federal officers shall be permanently retained by the Federation. Of the remainder of the proceeds a specified percentage prescribed by an Order in Council shall not form part of the revenues of the Federation but shall be distributed among the Provinces in a prescribed manner. But as it is not possible for the Federation to carry out such distribution during the initial stages of the Federation without its being left with a deficit, the Act provides that the Federation may retain out of the amount so assigned to the Provinces a prescribed sum for a prescribed period of years, and that, during a subsequent period of years, the sum so retained by the Federation in the last year of the first period should be distributed to the Provinces in equally rising annual instalments so as to reach the maximum assigned to the Provinces at the end of the second period.[1]

The task of making recommendations with regard to the several matters which had to be prescribed by His Majesty in Council under this provision was entrusted to Sir Otto Niemeyer. He had to investigate and to recommend: (1) what percentage of net taxes on income was to be assigned to the Provinces, (2) over what period and subject to what conditions the Provinces should gradually come into possession of the resources represented by the percentage, and (3) the basis of distribution among the Provinces.

After a thorough examination of the budgetary position of the Provinces and the Centre, Sir Otto Niemeyer made his recommendations on all the points referred to his consideration. These were accepted by His Majesty's Government and approved by Parliament. They are given validity by the Government of India (Distribution of Revenues) Order, 1936.

The net effect of this Order is that the percentage of the

[1] *Government of India Act*, sect. 138.

proceeds of income-tax assignable under the Act to the Provinces as their share is fixed at 50, and this share (estimated by Sir Otto Niemeyer to amount to Rs.6 crores) is to be distributed among the Provinces in the following proportions:

	Per cent
Madras	15
Bombay	20
Bengal	20
United Provinces	15
Punjab	8
Bihar	10
Central Provinces	5
Assam	2
North-West Frontier Province	1
Orissa	2
Sind	2
Total	100

But during the first five years from the commencement of Provincial Autonomy, that is to say from 1937 to 1942, the Federation may retain for itself either the whole of the Provincial share or such part of it as will, together with the Federation's share of income-tax and the contribution payable by Railways to Central Revenues, on the basis of the Railway Convention of 1924, amount to Rs.13 crores. In the next year, viz. 1943, one-sixth of the sum retained by the Federation in the previous year is distributable among the Provinces, this sum increasing by a further sixth in each of the next five succeeding years so as to reach the full percentage assigned to the Provinces by 1948.

The working of this programme thus depends upon the Indian Railways making a contribution to the finances of the Centre on the basis of the Railway Convention of 1924. Only the receipt of this contribution will enable the Centre to carry out the distribution by relinquishing its hold on the

Provincial share. According to the Railway Convention, a contribution amounting to something like Rs.5 crores, representing 1 per cent. on the capital at charge of commercial lines, is payable from railway receipts to the general revenues of the Central Government. The Convention worked satisfactorily till 1931–2, and a total sum of Rs.42 crores was paid by Railways to Central Revenues. But from 1931–2 onwards this contribution had been suspended, as the Indian railways were working at a great loss and were able to make both ends meet only by heavy borrowings from the Depreciation Fund. Railway revenues have, however, now shown an improvement, and this has made it possible to begin the distribution of income-tax receipts under the Niemeyer award. It is expected that a sum of Rs.1.38 crores will be available for distribution to Provinces as their share of income-tax in 1937–8.

In a well-organized Federation, it is the duty of the Federal Government to apply the common resources in such manner as will best promote the welfare of the nation as a whole; this is done by making real transfers from the richer to the poorer units, by taxation designed to fall more heavily on the former and by subsidies or subventions particularly benefiting the latter.[1] Under the new dispensation the method of subventions is extended to what are known as deficit Provinces on the superficial ground of their budgetary deficits, while the States can never hope to obtain any aid from the Federation though they are admittedly poorer than the Provinces.

The question of the deficit Provinces was first brought to notice by the Percy Committee, and the second Peel Committee (1932) recognized that provincial solvency must be secured if the Provinces were to function successfully. They accordingly proposed that any proved cases of deficit Provinces should be met by subventions from the Centre on

[1] Adarkar, *The Principles and Problems of Federal Finance*, p. 183.

certain conditions. The Joint Parliamentary Committee approved of this proposal and the Act gives effect to it. It is provided that: 'Such sums as may be prescribed by His Majesty in Council shall be charged on the revenues of the Federation in each year as grant in aid of the revenues of such Provinces as His Majesty may determine to be in need of assistance, and different sums may be provided for different Provinces'.[1]

Sir Otto Niemeyer was asked to make recommendations with regard to the assistances to be given to the different Provinces under this provision. After reviewing the financial position of the Provinces, he found that no less than eight out of the eleven Provinces were unable to balance their budgets with their own resources, and that they stood in need of aid from the Centre to place them 'on an even keel'. He came to the conclusion that assistance of the following approximate annual amounts should be given to the Provinces mentioned below, as from the date of Provincial Autonomy, and that this assistance should be given irrespective of the ultimate allocation of taxes on income.

	Rs. Lakhs.	
1. Bengal	75	
2. Bihar	25	
3. Central Provinces	15	
4. Assam	45	(apart from Rs. 7 lakhs in respect of the Assam Rifles)
5. North-West Frontier Province	110	
6. Orissa	50	(plus Rs. 19 lakhs non-recurrent)
7. Sind	105	(plus Rs. 5 lakhs non-recurrent and to diminish)
8. United Provinces	25	for 5 years
Total	450	

[1] *Government of India Act*, sect. 142.

As regards the form which this measure of assistance should take Sir Otto suggested two methods. Firstly, he recognized that where financial assistance is to be given by a creditor to an existing debtor elementary common sense suggested that the shortest and simplest method of adjustment was by reducing the claim of the creditor on the debtor. Applying this method he recommended the cancellation of all debt contracted with the Centre by Bengal, Bihar, Assam, North-West Frontier Province and Orissa prior to 1 April 1936. This would mean an approximate annual net saving (in lakhs of rupees) to Bengal of 33, to Bihar of 22, to Assam of 15½, to North-West Frontier Province of 12, and to Orissa of 9½ lakhs, which the Provinces concerned would otherwise have had to incur. As regards the Central Provinces, Sir Otto recommended the cancellation of all deficit, which meant an annual saving of Rs. 15 lakhs to the Province. This form of assistance would cost the Centre Rs. 107 lakhs.

The other method suggested by Sir Otto Niemeyer was that part of the assistance should take the form of an increase in the percentage of the proceeds of the export duty on jute to the jute-producing Provinces. Fifty per cent. of the duty had already been assigned to the Provinces. Sir Otto recommended that this should be increased to 62½. On the estimated gross yield of the duty in 1936–7 at Rs. 380 lakhs, this increase of 12½ per cent. would mean in round figures the following additions to the resources of the Provinces concerned, at a corresponding cost to the Centre: Bengal Rs. 42 lakhs; Bihar Rs. 2½ lakhs; Assam Rs. 2¼; Orissa, rather over Rs. ¼ lakh.

The result of these two methods was to complete the required assistance except in the case of Assam, the North-West Frontier Province and Orissa, which would still require Rs. 30,100, and Rs. 40 lakhs respectively. In addition there remained the special cases of the United Provinces and Sind, in which, for different reasons, Sir Otto considered that the

method of adjustment by debt cancellation was not thought appropriate. He recommended, therefore, that annual grants in aid should be charged on Central Revenues as follows:

	Rs. Lakhs.	
1. United Provinces .	25	for a fixed period of 5 years.
2. Assam . . .	30	
3. North-West Frontier Province . .	100	subject to reconsideration at the end of 5 years.
4. Orissa . . .	40	with Rs. 7 lakhs additional in the first year, and Rs. 3 lakhs additional in each of the next 4 years.
5. Sind . . .	105	for 10 years with Rs. 5 lakhs additional in the first year, then falling until the grant ceases entirely on the extinction of the Barrage Debt in about 45 years.[1]

These recommendations are also given validity by the Government of India (Distribution of Revenues) Order, 1936. The grants fixed by this Order cannot be increased by a subsequent Order unless an address is presented to the Governor-General by both Chambers of the Federal Legislature for submission to His Majesty praying for such increase.[2]

While the Provinces are thus given large subventions from the Centre, the States are saddled with an expenditure which has no counterpart in the Provinces. Several of them maintain bodies of well-equipped troops which have always been placed at the disposal of the British Government in times of emergency. Unstinted military co-operation has always been forthcoming from Indian States in time of war when desired by the British Government. There are records of fine services having been performed by States' troops in the Gurkha War,

[1] *Indian Financial Inquiry Report*, paras. 17 to 24.
[2] *Government of India Act*, sect. 142.

the first and second Afghan Wars, the first and second Sikh Wars, the Mutiny, and the Great War, as well as in certain Frontier expeditions.

War service revealed certain military defects in regard to the organization, etc. of these troops, which were discussed after the Great War with certain of the leading Princes. As a result the troops were re-organized under the present title of 'Indian States Forces' and divided into the following categories:

Class A—Units with establishments, organization, arms, and equipment, the same as for corresponding units of the Indian Army and for whom arms are initially issued free of charge by the Indian Government.

Class B—Units not organized or armed on the lines of Indian Army establishments, but which are intended to be fit to re-inforce Class A troops or for employment as second-line troops.

Class C—Formations not permanently embodied.

The effective strength of Class A and B of the Indian States Forces provided by forty-nine States stood at 37,622 on 1 April 1931. The amount actually expended by the States on their forces was investigated by the Special Committee, which reported the total expenditure by the States on maintenance of Classes A and B to be over Rs.2 crores.[1]

The existence of these troops relieves the British Government of the necessity of maintaining troops for the internal security of the States and also places at its disposal a body of well-equipped troops in times of war. The Peel Committee recommended that a financial adjustment in the case of these troops 'should be taken up between the Military and Financial authorities of the Federal Government on the one hand, and the Indian States on the other'.[2]

[1] *Indian States Inquiry Committee Report*, paras. 170 and 171.
[2] *Peel Committee Report* (1931), para. 19.

One other matter connected with Federal Finance is that of exemption from taxation of the property both of the Federation and of its units. The Peel Committee agreed in principle that no form of taxation should be levied by any unit of the Federation on the property of the Federal Government.[1] This principle was again affirmed by the Federal Finance Committee.[2] The Act accordingly provides that property vested in His Majesty for purposes of the government of the Federation shall, save in so far as any Federal law may otherwise provide, be exempt from all taxes imposed by, or by any authority within, a Province or Federated State. But until any Federal law otherwise provides, any property so vested which before the inauguration of Provincial Autonomy was liable to any such tax shall continue to be liable so long as that tax continues.[3]

As regards the exemption of the property of the units from federal taxation, the Federal Finance Committee recommended that the exemption should be confined to land and buildings, and should not extend to customs duty on imported stores.[4] The Act accordingly confers a qualified immunity on the units. The ruler of a State is not liable to federal taxation in respect of lands or buildings situate in British India or income arising in British India.[5] This immunity is subject to two exceptions. Firstly, it does not extend to profits earned by a State in carrying on trade or business in British India. Such profits are even now liable to British-Indian taxation under the Government Trading Taxation Act, 1926, and this liability will continue under the Federation also. Secondly, the immunity does not extend to a ruler's personal income, unless such income is derived from Government of India Securities issued before

[1] *Peel Committee Report* (1931).
[2] *Federal Finance Committee Report*, para. 119.
[3] *Government of India Act*, sect. 154.
[4] *Federal Finance Committee Report*, para. 120.
[5] *Government of India Act*, sect. 155.

the passing of the India Act. If a ruler holds Securities issued after that date the interest accruing on such Securities is subject to taxation.

The above are the main principles of Federal Finance embodied in the Government of India Act. Their introduction is however complicated by the existence of contributions made by certain States to the Crown in the form of tributes or ceded territories, and immunities which many States enjoy in respect of certain heads of Federal Revenue. These raise special problems and are dealt with in the next three chapters.

The acceptance of the scheme embodied in the Act by individual States further raises problems peculiar to the States concerned. One such, which may be taken as illustrative, is that which arises in connexion with the acceptance of the item Export Duties by the State of Mysore. This State is the only unit of the Federation which produces mineral gold, and more than 98 per cent. of the gold exported from India is from Mysore. No duty is now levied on this export, but several responsible commercial bodies in India have been urging the levy of a duty in view of the large quantity of gold exported annually from India. If such a duty comes to be levied in future an unqualified acceptance of the item by Mysore will leave it to the Federation to appropriate the proceeds for itself. The State may very well claim to make provision in its Instrument that the proceeds of any such duty should become payable to it. This claim cannot be regarded as inconsistent with the scheme of Federation, for the Act itself recognizes and gives effect to the principle that the proceeds of an export duty on any commodity which is *sui generis* to a unit should be paid to that unit. It is on this principle that the proceeds of the export duty on jute are distributed among the jute-producing Provinces. There can be no valid reason why the same principle should not be extended to a State.

In conclusion, it may be stated that it is indisputable that

the States, in acceding to the Federation, are sacrificing some of their resources which, but for their accession, they would themselves retain. It is true that by doing so they will participate in the larger political life of India and promote the cause of Indian unity and Indian nationalism. None the less it is equally true that, judged in terms of money, they are paying a heavy price for such unity. None of the services maintained by a State is going to be taken over by the Federation and the State relieved of its expenditure. The only visible benefit which the States stand to gain is that of representation in the Federal Legislature, which strangely enough is in inverse proportion to the magnitude of the sacrifices made by individual States. The major States which make greater sacrifices get a representation wholly incommensurate with their relative size and population. How far such representation outweighs the financial sacrifices demanded of it is a matter which each State will have to judge for itself.

CHAPTER VI

TRIBUTES AND CASH CONTRIBUTIONS

Of the 562 States and estates in India, a great majority pay nothing at all to the Crown by way of tributes. Only 212 of them, including some of the major States, make regular annual cash payments as tributes. These are both arbitrary and unequal in their incidence on individual States. The largest of these tributes is that of Mysore, which pays a sum of Rs.24½ lakhs in two equal instalments every year; next come Travancore and Jaipur which pay Rs.8 lakhs and Rs.2 lakhs each. Cochin and Udaipur contribute Rs.2 lakhs each. The big State of Kashmir makes a payment in kind of a pair of its beautiful shawls. The remaining 206 States pay different sums of money ranging from a paltry sum of Rs.3 paid by the estate of Ranasan in Bombay to several thousands, and in some cases like Jodhpur and Bhopal, to a lakh and more. The total of the amounts so received by the Crown is Rs.72 lakhs which form part of the revenues of the Government of India.

The official term to denote these payments seems to have been changed recently from 'Tributes' to 'Payments from Indian States'. This change of nomenclature has been brought about, perhaps, by the spirit of the times which has rendered such terms as 'Tributes' and 'Tributaries' somewhat obnoxious. But it fails to conceal either the real nature of the payments themselves or the great injustice done to the people of the States burdened by them.

The origin of tributes lies embedded in the historical and treaty relations of the States with the British Government.

In the early days of the East India Company, all that either the Company or the British Government desired in their intercourse with the States with which they came in contact, were reciprocal alliances for the protection of the Company's trade. Gradually, as the Company extended its influence, it evolved and adopted the plan of guaranteeing protection to the ruler of an Indian State against aggression, by providing him with what in those days were known as 'Subsidiary Forces'. These forces were maintained and equipped at the cost of the ruler himself either by regular annual cash contributions from him in the form of tribute or from the revenues of territories ceded by him for the purpose. As one State after another entered the Company's ring of alliances, they were required, in accordance with this plan, to make an annual cash contribution or to cede territory; they were also obliged to render subordinate co-operation in times of common danger. Such was the origin of tributes, but later on they were established in various other ways.

Contributions imposed definitely as the price of protection or in recognition of British suzerainty are the simplest and most typical form of tributes. The treaties of 1818 concluded by Lord Hastings with the Rajputana States of Jaipur and Udaipur furnish illustrations of this class of contribution. By these treaties protection was guaranteed to the States in question, and they on their side acknowledged the supremacy of the British Government and agreed to act in subordinate co-operation with, and to pay tribute to, that Government. Similarly the State of Mysore agreed to pay a tribute of Rs.24½ lakhs in consideration of the protection guaranteed to it in 1799.

Another form which prevails to a limited extent is that in which an original obligation, undertaken by a State, to supply troops to the Company for purposes of common defence has been commuted later to a fixed annual cash payment. The State of Bhopal furnishes a good example of this type of case.

This State, by a treaty of 1818, was guaranteed protection and undertook to provide a contingent of 600 horses and 400 foot, a liability which, in 1849, was commuted to an annual payment of Rs.1,61,290 the present cash contribution of the State. Another instance is that of the small State of Jaora which in 1818 stipulated to maintain a force of 600 horse in constant readiness for service. This obligation was later converted into a money payment.

In some other cases a tribute has been fixed on the creation, restoration or enlargement of a State. One of the earliest cases is that of Cooch-Behar, whose Raja agreed in 1773, as the price of delivery from Bhutan, to pay half the annual revenues of his State for ever to the British Government. This obligation was commuted in 1780 to a fixed annual payment of Rs. 67,700, the amount of the present contribution. The State of Benares affords a modern instance. In 1911 certain tracts of land in the United Provinces comprising part of the family domain of the successors of Raja Chet Singh were constituted into the State of Benares, the Maharaja being created a Ruling Prince. In consideration of this re-establishment the Maharaja undertook to pay a cash contribution of Rs.2.4 lakhs calculated on the basis of the loss of revenue involved in making over the sovereignty of the territory to the Maharaja.

There are also a considerable number of cases in which States pay tributes in respect of certain portions of their territory, originating in the fact that their title to the districts in question was in some doubt or was asserted only by means of British support. Ajaigarh in the Central India Agency, for example, pays an annual tribute of Rs.7,014 for two districts granted to the State after its restoration in 1803. Bhavanagar, in Kathiawar, makes a payment of Rs.52,000, fixed in 1860, for certain villages in which that State had been tacitly allowed to exercise sovereign rights after their cession by the Peshwa to the British Government in 1802.

Lastly a few States make annual contributions for some special or local purpose. The State of Kotah, for example, makes a payment of Rs.2 lakhs towards the cost of a special body of troops known as the Mina Corps, and Kolhapur makes certain special payments for the upkeep of the Kolhapur Infantry, maintained under the command of the British Resident for the time being at Kolhapur. Some of the States in Central India similarly make contributions towards the cost of the Malwa Bhil Corps.

Along with the tributes so negotiated and imposed by it directly, the Company acquired the right to receive others on the conquest or the lapse of the State which originally received them. In its career of conquest it obtained by transfer or inheritance from previous suzerains and overlords the right to receive the tributes paid by States subordinate to them. The tributes of the petty States in Kathiawar, Bihar, and Orissa, and Central India were acquired in this manner from the Peshwa, Scindia, Holkar and other overlords, who once held sway over those parts of India. Tributes of both categories, namely, those directly imposed by the Company and those inherited by it, are still in existence and are being paid regularly by the States concerned. The oldest of all such tributes is the Cooch-Behar tribute, which dates from 1774, and those of Travancore and Mysore, which come next, date from 1795 and 1799 respectively.

An outstanding case which well illustrates the nature of tributes is that of Mysore, which, on account of the magnitude of the burden imposed on the State, has assumed great importance and has figured prominently in the debates on Indian Constitutional Reform in the House of Commons. It has a unique history behind it and has played a persistently prominent part in the relations of the Mysore State with the British Government. Its origin goes back to the closing days of the eighteenth century when British ascendancy was but imperfectly established, and political conditions in India were

still unstable. The authority of the East India Company was hotly disputed and its territories were threatened by the restless aggression of the French and by their powerful ally Tipu Sultan, who, after setting aside the Hindu dynasty of Mysore, had combined his forces with those of the French to extinguish the Company's power in India. To secure its possessions, the Company had entered into a series of alliances with the other existing powers in India, and had concluded a treaty with one of the representatives of the deposed Hindu dynasty, in 1782, to re-establish that dynasty in its hereditary possessions by putting an end to the pretensions of Tipu Sultan. Seventeen years later, in 1799, the Company defeated Tipu in the memorable battle of Seringapatam and carried out the obligation undertaken by it in accordance with the terms of the treaty of 1782 by restoring the country to the Hindu dynasty in the person of Maharaja Sri Krishnaraja Wadiyar Bahadur III, the grandfather of the present Maharaja.

A treaty generally known as the Subsidiary Treaty of Seringapatam was then concluded between the Maharaja, a boy then hardly six years old, and the East India Company. By one of its provisions a tribute of 7 lakhs of starpagodas, equivalent to Rs.24½ lakhs in modern currency, was imposed on Mysore in consideration of troops maintained by the Company for 'the defence and security of His Highness' dominions'. To ensure the prompt payment of the sum stipulated, it was further provided that, in case of default, the Company should have the power of assuming temporarily the direct management of such part or parts of the territories of Mysore as would be sufficient to render the amount available. The words of the Treaty seem to suggest that the tribute was to be levied temporarily until a Government was 'effectually established' for the country, which had just been conquered and was therefore in a disturbed condition. But it has come to assume a permanent character and

continues to be levied even after the administration of Mysore has not merely been 'effectually established', but has been often acknowledged to be a 'model and progressive one'.

The tribute seems to have been fixed arbitrarily and without any reference to the capacity of the State to pay it. Sir Arthur Wellesley (later the Duke of Wellington) who with his brother, the Marquess of Wellesley, was responsible for the Treaty of Seringapatam and who, during his stay at Mysore, as the Commandant of the British contingent there, had ample opportunities of observing at close quarters the reactions of this levy on the finances of the country regarded it as 'a heavy drain on the resources of the State'.[1] The Maharaja also protested later that the State was unable to bear the burden and that a portion of the internal wealth of his country annually left it in the form of tribute. He complained that he was hard put to it every year to find the necessary specie to make the payments. But his complaints were of no avail.[2]

The Maharaja made it a point, however, to be very regular in meeting his treaty obligation, although he was enabled to do so only by sacrificing even the bare necessities of administration and keeping the pay of his own troops in arrears. In 1831, nevertheless, it was represented by the Madras Government of the day to Lord William Bentinck, the then Governor-General, that the revenues of Mysore were fast declining as a result of gross mismanagement, and that the Maharaja was very unpunctual in paying the tribute, and that, in fact, he had allowed it to fall into arrears. The Governor-General decided at once to enforce the penal provisions of the treaty and wrote to the Maharaja calling upon him to surrender the administration of the State to the Company. This letter was delivered to the Maharaja when he was celebrating the Dasara festivities of 1831. He peacefully handed over the

[1] *Command Paper* 112 *of* 1866, page 61. [2] Ibid.

reins of Government to a commission of British officers appointed by the Governor-General to govern the country in the Maharaja's name.

It was discovered soon afterwards that a great injustice had been done to the Maharaja and that the management of the country had been taken over on wholly erroneous grounds. When the Madras Government happened to make a reference to their Accountant-General, the return made by that officer clearly proved that there was no failure in the monthly payments of the instalments of the tribute.[1] In fact a payment in advance of nearly Rs.7 lakhs had been made by the Maharaja before the administration of the country was taken out of his hands.[2] When he came to learn of this, Lord William Bentinck bitterly regretted the step he had taken, and he is known to have stated more than once that it was the only act of his Indian administration that he looked back upon with deep sorrow. He acknowledged his error and placed it on record that he had been 'misled into hasty action by the exaggerated representations of the Madras Government'. He proposed that immediate restitution should be made to the Maharaja by handing back to him at least a portion of his kingdom. But the proposal did not meet with the approval of the Court of Directors, who decided to keep the country temporarily, at least, under British management, so that a 'more satisfactory and efficient system of administration' might be introduced and firmly established in it.

It is needless here to recount the subsequent history of what came to be known in those days as the 'Mysore question' or to narrate the measures taken by the Maharaja to regain his kingdom when it was threatened with absorption in British India. The forces acting against him were many, not the least of which was the doctrine of Lapse and Annexation so ably

[1] *Memoirs of General Briggs*, p. 142.
[2] *Command Paper* 112 *of* 1866, p. 61.

propounded by its apostle Lord Dalhousie. By 1860 the administration of Mysore had been much reformed and improved and placed on a level with those of the neighbouring British Provinces. The avowed object for which the country had been taken over by the British Government was thus fulfilled, but all thought of restoring the country to its sovereign seemed to have receded into the background. It appeared as though Mysore was going to be annexed finally by the British Government. The Maharaja repeatedly pressed for a recognition of his reversionary rights, but each time his claims were met with a stern refusal by the Government of India and the Secretary of State. Ultimately in 1867 the question was ventilated in Parliament thanks to John Stuart Mill and John (later Viscount) Morley and several other friends of Mysore, who saw in the Maharaja a much wronged Prince, and the result was a complete triumph for British justice and fair play. His Majesty's Government finally decided to restore the country to the adopted son of the Maharaja on his coming of age.

Mysore was accordingly renditioned in 1881, after fifty years of British administration, to Maharaja Sri Chamarajendra Wadiyar Bahadur, the father of the present Maharaja, on his attaining his majority. The tribute was at the same time enhanced by a sum of Rs.10½ lakhs and raised to Rs.35 lakhs. The normal revenues of the State from all sources hardly amounted to Rs.110 lakhs at the time, and the administration of the young Prince began its career with nearly a third of its revenue pledged to the British Government as tribute. The enhanced amount, however, was not levied for a period of five years in view of the depleted finances of the State, which had just then passed through the ravages of a terrible famine. The exemption from the payment of this additional sum was continued for a further period of ten years on the State agreeing to hypothecate its Railway for a period of fifty years to the Southern Mahratta

Railway Company as required by the Government of India. But from 1896 the full tribute of Rs.35 lakhs was levied regularly for a period of thirty-two years. In 1928 as a result of a long series of representations made by Mysore it was remitted by Rs.10½ lakhs and reduced to Rs.24½ lakhs—the sum originally fixed by the Treaty of 1799.

Despite this remission Mysore still continues to be the most heavily burdened of all the tributary States. No other State pays more than a third of the tribute paid by it. The total area of all the States in India is 675,267 square miles, of which Mysore comprises 29,461 square miles: i.e. about 4·7 per cent. In point of population, while the total for all Indian States is 81 millions, that of Mysore is 6·5 millions, i.e. about 8 per cent. But the State is still contributing no less than a third of the total income of the Government of India on this head. During the past one hundred and thirty-eight years during which time this levy has been in existence, it has paid altogether no less than Rs.37 crores to the British Government.

The exaction of tributes forms a melancholy chapter in the history of the relations of the States with the Paramount Power. These tributes are unique survivals of an historical past, and one has to search in vain for their counterpart in the financial agreements which exist between Governments anywhere in the world. The Indian States have been paying them regularly without any reference to their own financial difficulties though they weigh heavily on the States affected.

The Mysore tribute was levied even when the country was being devastated in 1876 by one of the worst famines recorded in the annals of Indian famines, one which took a toll of more than a quarter of its population and forced the State to raise a large loan at a heavy rate of interest to afford relief to its people. In more recent times, during the world-wide economic crisis of 1930 and the following years, when nations with far greater resources at their command than

the Indian States were forced to suspend their financial obligations, the Indian States were held bound to their treaty payments, with a rigour which hardly seems to have left them any hope of even a postponement being allowed in the instalments of their tributes when they became due. Ever since their imposition, tributes have acted as a drag on the development of the States and arrested them from growing to their full stature. The Mysore tribute is admitted by the Government of India to be 'locally regarded as a crushing burden on internal development and progress'.[1] The State would certainly have had a greater record of achievements to its credit if its spending power had not been curtailed to the extent of the Rs.37 crores which have been exacted from it in the past hundred and thirty-eight years.

The abolition of these tributes is demanded on many grounds. For one thing it would redound to the benefit of the people of the States on whom the burden of finding the money ultimately falls. It would put an end to the annual drain on the finances of the States affected and, by placing additional resources at their disposal, would enable them to undertake schemes of national development, the absence of which in some of the States is very often urged as a reproach against them. There does not seem to be any insuperable difficulty in doing away with them altogether and writing upon a clean slate. The Government of India could easily give up these contributions, for they are by no means so considerable as to make them essential for the balancing of its budget. Their levy under modern conditions cannot be defended on any principle, and such levies, reminiscent of medieval feudal conditions, do not seem to prevail in practice anywhere outside India. The exaction of such compulsory contributions from States, which, for all practical purposes, form integral parts of the British Empire, can only be regarded as an anachronism and a survival of the past. The

[1] *Memorandum of Federal Finance*, para. 30.

only justification for their continuance seems to be that they are secured by treaties concluded generations ago. But to hold the States bound perpetually to their contributions simply because they were agreed to in the past, is, to say the least, to carry the principle of the sanctity and inviolability of treaties to a point bordering on absurdity. No treaty in the world has remained immune from all change, and even Indian treaties have undergone many changes by sheer force of circumstances. Their complexion has been transformed beyond all recognition by the later accretions of usage and political practice. The only provisions in them which have remained unaffected by time and the vast changes which have taken place in India are those relating to the financial obligations of the States to the British Government. There is nothing sacrosanct about these provisions and they should also be modified or rescinded by mutual agreement so as to bring them into conformity with the altered conditions of modern times. Even the heavy war indemnities imposed on ex-enemies under recent treaties have been greatly modified in the light of circumstances which have later supervened. It would be ridiculous to deny a similar modification of their financial obligations to States which have always been termed 'allies' of the British Government and have rendered it no small service in establishing and consolidating its supremacy in India.

The abolition of tributes becomes all the more necessary in a federation which the States are to enter as constituent units. A federal system which contemplates the levy from 212 State-Members of a contribution which the remaining 350 States and 11 Provinces do not make, is inconceivable not merely from the constitutional but also from the logical point of view, and iniquitous from the point of view of practical politics. Such exceptional contributions negate the fundamental principle that the Central Government should derive its revenue from sources common to all the units alike,

and are moreover inconsistent with the equality of units which a federation pre-supposes. Only the disappearance of these contributions would make the financial obligations uniform in all the units. It was therefore proposed by the Mysore representative, Sir Mirza Ismail, in the Federal Structure Committee that tributes should be totally extinguished before the States joined the Federation. He pointed out that their existence in a Federal constitution would be a glaring self-contradiction, and that the people of the States would have no faith in a constitution if it made an admitted iniquity a part of its fiscal system.[1] Since then he has been strenuously advocating the cause of the tributary States, and, in several of his speeches and writings, he has made a strong plea for the extinction of these imposts under which the States have groaned for ages. His proposal has gathered a large measure of support from several leading members of the British-Indian Delegation, notably from Sir Tej Bahadur Sapru and Pandit Madan Mohan Malaviya. The question of the continuance or extinguishment of tributes under the new Constitution was considered by the two Federal Finance Sub-Committees presided over by Lord Peel, and was the subject matter of a detailed investigation by the Indian States Inquiry Committee (Financial) under the Chairmanship of the Rt. Hon. Mr. J. C. C. Davidson. The first Peel Committee recorded it as their opinion that there was no place for contributions of a feudal nature like tributes under a federal constitution. But, as the circumstances under which they have been levied vary so much, the Committee recommended that an 'Expert Committee should be appointed to undertake a detailed examination of each individual case'.[2] The Indian States Inquiry Committee (Financial) was accordingly appointed in 1932 by His Majesty's Government to review the origin and purpose of all

[1] *Proceedings of the Federal Structure Committee*, vol. i.
[2] *Report of the Federal Finance Sub-Committee*, para. 18.

cash contributions with a view to advising whether they should be immediately reduced or eventually extinguished in the Federation.

In view of the extent and diversity of the field that had to be covered by them, the Committee visited as many as possible of the important States, had personal discussions with rulers or ministers at convenient centres, and, after making a detailed study of the subject remitted to their consideration, submitted an exhaustive report. The Committee have dealt with each case of contribution individually and given a brief account of its history and origin. Tributes have been divided by them into seven main categories according to the purposes for which they were originally imposed. But although this classification may have an academic and historical interest, it has, as the conclusions of the Committee have shown, little value in regard to the immediate problem of what the position of tributes is to be under the new Constitution. As a result of their investigation the Committee were convinced that 'the distinctions which exist between one State and another in this respect, as well as in respect of the amount of tribute paid, are largely the result of a series of historical accidents depending on the circumstances in which the relations of the State and the British Government were stabilized, or of the exigencies of the time or the policy which then prevailed'; that though contributions to the Paramount Power by some of the States under its suzerainty may have had a historical justification as between the members of a Federation, such payments by some units for the benefit of all have no logical basis' and, that 'the States now paying tributes can and do justly urge that no unit on entry into Federation should remain burdened by these exceptional contributions, in addition to the contribution which it makes through the incidence of indirect taxation common to all alike'.[1]

[1] *Indian States Inquiry Committee Report*, para. 64.

The Committee came to the very proper and indeed inevitable conclusion that there is no place for tributes in a federal constitution, and that with federation they should be brought to an end. But having said all this and something more in support of the abolition of tributes, the Committee fell into an obvious error which vitiated the final recommendations they made on the subject. As pointed out in the last chapter, a good portion of the present revenues of the Government of India, viz. 50 per cent. of the net receipts from income-tax, will be transferred to the Provinces under the new Constitution and distributed among them on a prescribed basis. But, as it is not possible for the Federal Government to carry out this distribution immediately without its being left with a deficit, it is provided that during the first five years the Federal Government may retain the whole or part of the distributable amount in aid of its revenues, and that during the next five years the amount so retained should be assigned to the Provinces in equally increasing annual sums so as to reach the full percentage of fifty by the end of that period. The Committee fell into the error of looking upon the non-receipt of their share of income-tax by the Provinces during the first five years as being equivalent to a regular contribution made by them to the federal fisc and analogous to tributes from the States. The Provinces were regarded by the Committee as making a contribution to the Centre 'in the form of taxes on income'. These 'contributions' of the Provinces were assumed by the Committee to be the counterpart of tributes, that in fact the contributions from one group of partners to the Federation, viz. the Provinces, would counterbalance the contributions of the other group, viz. tributes paid by the States. They therefore thought it not unreasonable to look forward to the extinction or reduction of the one *pari passu* with the extinction or reduction of the other.[1] But, as a matter of fact, there is no

[1] *Indian States Inquiry Committee Report*, para. 39.

point of similarity between the so-called 'contributions' of the Provinces and tributes to lead the Committee to proceed on such an erroneous analogy. The 'Provincial contributions' bear no sort of resemblance whatever to tributes. The only counterparts to tributes were the short-lived provincial contributions under the Meston Award which disappeared long ago. Under the new dispensation the Provinces stand to gain large financial benefits at the expense of the Centre, and large sums of money representing half the net proceeds of income-tax are to be paid out to them by the Central Government. But owing to the financial exigencies of the Centre the benefits of this scheme do not accrue to the Provinces in full for some time to come. The non-receipt of their share of income-tax by the Provinces during this period can at best be regarded as a nominal contribution, for none of them would in fact contribute a single anna from its own resources to the Central Government. But the States would continue to make an actual payment in paying their tributes. This essential difference was overlooked by the Committee who took the two to be *in pari materia*, and made the startling recommendation that tributes 'should disappear *pari passu* with contributions in the form of taxes on income from the Provinces to the Federal Government'. The Committee could not hazard an estimate of the time required for this process to take effect. They considered it, however, essential in the interests of the tributary States that a moiety should be extinguished not later than ten years from the date on which they enter the Federation, and that provision should be made to this effect.[1]

The main recommendation of the Committee was thus in clear contradiction to the principle so clearly recognized by them in the body of their Report, and gave a fresh lease of life to what should definitely have been extinguished on federation. The Committee made a minor recommendation

[1] *Indian States Inquiry Committee Report*, para. 90

calculated to give some immediate relief to the more heavily burdened of the States. They were impressed by the hardship caused to certain States by the relative magnitude of the burden borne by them, and they felt that some relief was urgently needed in such cases. The first Peel Committee had also been similarly impressed, and they recommended that the sum by which any contribution was in excess of 5 per cent. of the total revenues of a State should be remitted at once.[1] The Indian States Inquiry Committee had no hesitation in supporting this proposal, and they emphasized that as the inequality of the payments was very marked, the remission 'should be immediate, that is to say, prior to Federation'.[2]

The Committee made a rough calculation of the relief admissible under their proposal and indicated in one of the appendices to their Report the amount to be remitted in the case of each individual State. By this proposal Mysore was entitled to a remission of nearly a third of its tribute (Rs.7,17,000); Benares would have had nearly Rs.1,48,000 of its contribution remitted; Mandi, Rs.23,000, and 58 other States stood to benefit in varying measure. The loss thereby sustained by the Government of India would have been about Rs.11 lakhs a year.

But the implementing of this recommendation was interpreted by the Government of India to be conditional on its own financial exigencies. At the time the Committee made their report the Government of India was passing through the world-wide economic depression of 1930–2 and had been forced to levy a surcharge on income-tax and salt to balance its budget, and to introduce as a measure of economy a cut in the salaries of its employees. In response to the request of the States to carry out the recommendation of the Committee for immediate relief, the Government of India seems

[1] *Report of the Federal Finance Sub-Committee*, para. 18.
[2] *Report of the Indian States Inquiry Committee*, para. 88.

to have told them in so many words that it would not be possible for it to do so until it was in a position to remove the surcharges, to restore full pay to its employees and to settle satisfactorily the question of special assistance to be given to deficit Provinces.[1] It need hardly be said that this was a very unfair answer to the States which, in common with the Government of India, were suffering from the prevalent economic depression. There was a big drop in the revenues of many of the States and they were finding it extremely difficult to find the funds for paying their tributes. The proposal of the Committee, if it had been carried out, would have helped them a great deal at a time when they stood most in need of help.

While thus denying to the States with one hand a small measure of relief which would not have cost it a sum of more than Rs. 11 lakhs a year, the Government of India itself was receiving with the other a generous contribution from His Majesty's Government given under somewhat similar circumstances. The Indian Defence Charges Tribunal, which was appointed by His Majesty's Government to examine and report upon certain questions in regard to Defence Expenditure in dispute between the Government of India and the War Office and the Air Ministry, made an award in favour of India, and recommended that a contribution should be made from Imperial resources towards the military expenditure of the Government of India. The award was immediately accepted and acted upon by His Majesty's Government, who consented to make a substantial annual contribution of nearly two crores of rupees to the Government of India. The receipt of this contribution, coupled with the general economic recovery of the country, had so improved the finances of the Government of India as to enable it to restore full pay to its employees and to reduce to some extent the emergency

[1] *Minutes of Evidence recorded before the Joint Parliamentary Committee*, Question 8202.

surcharges. With this improvement in its finances, the Government of India could very easily have given effect to the recommendation of the Committee. But instead of doing this and giving the relief to the States to which they were entitled by the verdict of two independent and impartial Committees, it doled out large sums of money to subsidize the so-called deficit Provinces and made grants to the Provinces for rural uplift and for schemes of broadcasting in British India. The States were meted out, even on the eve of federation when they ought to have received the same consideration as the Provinces at the hands of the Central Government, a step-motherly treatment, and the recommendation of the two Committees was allowed to become a dead letter.

It has now been announced that effect will be given to the recommendation of the Committee from 1937–8. This delay however, has resulted in reducing the measure of relief which some of the States would have obtained if the recommendation of the Committee had been implemented in 1932. Their total revenues have increased in the past six years, and as the relief admissible under the recommendation is in inverse proportion to such revenues, the amount ranking for remission in their case has undergone a proportionate reduction. Thus the State of Mysore which was entitled to the remission of a sum of Rs.7.17 lakhs, which represented that portion of its tribute which was in excess of 5 per cent. of its total revenues of Rs.346 lakhs in 1932, now gets a remission of about Rs.5.2 lakhs only, as its revenues have increased to Rs.386 lakhs.

The main recommendation of the Indian States Inquiry Committee that the States should continue to pay in their tributes for a period of twenty years after their entry into the Federation, evoked a good deal of criticism in the tributary States. Public meetings were held in several States protesting against the recommendation and an All-Mysore

mass meeting, attended by delegates from all parts of the State, was held at Bangalore to express the dissatisfaction of the people of Mysore. A resolution that the Mysore State should not join the proposed Federation unless the tribute was abolished was tabled for discussion at the popular chamber, the Representative Assembly. The matter was taken up again by Sir Mirza Ismail, the indefatigable advocate of the tributary States, this time before the Joint Parliamentary Committee, and when Sir Samuel Hoare, the Secretary of State for India, offered himself as a witness before the Committee, Sir Mirza Ismail examined him at great length on the several issues arising out of the recommendations of the Indian States Inquiry Committee. The Secretary of State admitted that tributes were a tiresome form of contribution, that judged by modern standards many of them were quite unsuited to a new constitution, and that quite apart from their justice in the past and the historical reasons that gave rise to them, it would be a good thing to get them cleared out of the picture in any new Indian Constitution. He stated it as his definite opinion that if the question was not settled at the start in a rough-and-ready manner, it would lead to almost endless friction in the future.[1]

These tiresome forms of contributions, though condemned thus in no uncertain terms, are not, however, cleared out of the picture, but have become an integral part of the fiscal system of the new Constitution. The recommendation of the Indian States Inquiry Committee has been finally accepted by His Majesty's Government in the teeth of the widespread dissatisfaction expressed against it by the States, and the Act gives statutory form to the recommendation. It is provided that His Majesty may, in signifying his acceptance of the Instrument of Accession of a State, agree to

[1] *Minutes of Evidence taken before the Joint Parliamentary Committee*, Question 8471.

remit its tribute over a period of twenty years from the date of its joining the Federation. The remission, however, will not commence from the very outset by virtue of this agreement, but will come into effect only from the time when the Provinces begin to receive the moneys payable to them from the proceeds of income-tax and will be complete either by the end of the time prescribed for the payment of their full share to the Provinces, or at the end of twenty years, whichever may be earlier.[1] Until they are so extinguished, tributes shall continue to be payable as at present, and, if His Majesty so directs, they shall be placed at the disposal of the Federation.

The Act thus lays down that the remission of tributes shall proceed *pari passu* with the payment of the proceeds of income-tax to the Provinces. They will be remitted gradually in the same proportion as that in which the provincial share of income-tax is paid out to the Provinces and will be extinguished by 1947, if the programme fixed for the distribution of income-tax receipts to the Provinces described in the last chapter is carried out. Till then the States will have to continue to pay in their tributes, though the amounts payable by each State will undergo a gradual reduction.

The Act, no doubt, preserves the prerogative of the Crown to extinguish the tribute of any State at any time either in whole or in part, notwithstanding anything contained in the Act. But this provision is of little practical value to the States, for when once a State has agreed, when it joins the Federation, to the gradual extinction of its tribute as provided in the Act, it will be very difficult for it to move the Crown successfully to exercise the prerogative in its favour and wipe out its tribute all at once. It will have to make out a fresh case altogether to the satisfaction of the Crown that it is entitled to special treatment in spite of the agreement, and this will be found to be no easy task.

[1] *Government of India Act*, sect. 147.

It has been said in some quarters that the remission of tributes provided in the Act is an inducement held out to the States to make them join the Federation. In levelling this charge the Duke of Atholl observed in the House of Lords: 'Can it be denied that the policy of the Government is to offer inducements to certain princes to adhere to the Federation? In 1932 a Committee known as the Indian States Financial Inquiry Committee was sent out to inquire into and report as to the conditions on which the States might agree to federate. The Committee recommended that the States which paid tributes of money to the Government of India should have these tributes gradually remitted to them by the Central Government over a period of years, and payment should also be made to certain Princes for territories ceded by them at different times to the Government of India. These remissions and payments would amount to £750,000 in a year, or over 1 per cent. of the present Indian Central Budget. It is important to note that the Committee, in paragraph 435 of their Report, emphatically state that these remissions or payments are to be made only to Princes who join the Federation. They add that they were not empowered to make recommendations for the settlement of financial questions outstanding between British India and the States upon any other basis. In other words a system of inducements, bribery and of threats was suggested, because if they did not accept the inducements they were going to be financial losers and were practically to be put into outer darkness. In connexion with this it should also be observed that the Joint Select Committee referred to the "complicated financial adjustments" discussed by the Indian States Inquiry Committee, and stated that they "endorse the main principles" on which the Committee's Report is based. As the Government have approved the Report of the Joint Committee, presumably they also approve of these monetary inducements euphemistically described as "complicated

financial adjustments".' Even so eminent an authority as Professor Keith seems to suggest that the States are induced to join the Federation, by 'concessions as regards tribute payments'.[1]

This criticism assumes that the States are in no case entitled to be released from their treaty payments, and that the remission provided in the Act is a concession which would not have been shown to them but for the need of securing their adhesion to the Federation. Nothing could be more unjust to the States or further removed from truth. The question of the abolition of tributes was no new one. It did not take its birth at the Round Table Conferences and the proposal of an All-India Federation. It is as old as the tributes themselves. The States concerned have been urging on the British Government time and again the cessation of these obsolete levies. Successive administrations in Mysore had made representations to the British Government for the total abolition or at least a moderation of its tribute, pointing out that it constituted a terrible drain on its resources, and in one form or another the question has been coming up for consideration before the British Government for over a century. The British Government itself had recognized the need of an equitable adjustment of its financial relations with the tributary States and had from time to time granted some measure of relief to individual States by remitting a portion of their tributes. Nearly a third of the Mysore tribute was extinguished in 1928 long before the idea of an All-India Federation took definite shape.

Tributes stood self-condemned and they would have been blotted out of existence even if there had been no question of an All-India Federation. The reasons which led to their imposition in the past had long since ceased to exist, and any justification which they might have once possessed as the price of protection or otherwise had disappeared along with

[1] *Letters on Imperial Relations*, p. 218.

them. In the early days the only way of making a State pay for the protection accorded to it was by means of a direct cash payment in the form of tribute. No other means was available nor could any be devised under the circumstances which then existed. The levy of an indirect contribution from the people of the States was wholly out of the question, as large blocks of foreign territory stood between the States and the Company's dominions. But with the consolidation of British supremacy in India, it has become possible for the British Government to subject the people of the States to indirect taxation, as in Customs and Salt, and derive large contributions from them. The levy of such contributions is neither sanctioned by the treaties nor was it foreseen at the time the treaties were concluded. These indirect contributions have increased enormously with the recent rise in the level of those taxes. The States had all along maintained that they were entitled to a refund of the Imperial revenues so collected from their people, on the ground that it is an elementary principle that the revenue derived from any taxation is the due of the Government whose subjects consumed the commodities taxed. This claim had passed the stage of mere academic discussion of a barren right, and had assumed sufficient importance to become a question of practical politics. The Indian States (Butler) Committee which was appointed in 1928 to inquire *inter alia* into the financial and economic relations between the States and British India recognized that the States had in this respect 'a real and substantial grievance', and 'a strong claim to some relief'.[1] They thought that if the States were admitted to a share of the customs revenues they should bear their full share of Imperial burdens, on the well-established principle that those who share receipts should also share expenditure. The Committee recommended that a financial settlement should be made with individual

[1] *Report of the Indian States Committee*, para. 82.

States after a careful examination had been made by an expert committee of the claims of each of them to a share in customs revenue and the adequacy of their contributions to Imperial burdens.[1]

Nearly three years later, i.e. in 1930, the Government of India appointed, in pursuance of this recommendation, a small expert Committee known as the Nind Committee, after its Chairman Mr. Nind, under the administrative control of the Foreign and Political Department. The object of the Committee was to collect facts and statistics helpful in determining, firstly, the value of the direct and indirect contributions made by the States to Imperial resources, and secondly, to assess what their proportionate contribution to Imperial burdens should be. In arriving at the value of the contributions of the States the Committee were asked to take into account the contributions under the heads of Customs, Salt, Excise, Ceded Territories, and Indian Forces. As regards Imperial burdens the Committee were supplied by the Government of India with a list of items of expenditure incurred by it on matters of all-India concern in respect of which the States might legitimately be called upon to bear a share. The Committee collected the relevant facts and figures and submitted their Report in the same year.

According to the calculations of the Committee, out of an average total revenue of Rs.50 crores derived by the Government of India from indirect taxation, a sum of Rs.8.38 crores is being contributed by the States. The Committee did not further divide this sum and make an estimate of the contribution made by each State, as such a task did not fall within their terms of reference. But if such a division is made on the basis of the method of reckoning followed by the Committee it would be found that the tributary States are contributing far in excess of their share to the cost of

[1] *Report of the Indian States Committee*, para. 85.

Imperial burdens. To take the case of Mysore, the value of its indirect contribution is as follows:

	Rs. Lakhs.
1. Customs . . .	98
2. Salt . . .	18.5
3. Excise . . .	4.5
4. Indian State Forces .	15.6
Total	136.6

As against this, Mysore's share of the Imperial burdens would be about Rs.132 lakhs. It is obvious that by its indirect contributions alone Mysore is paying Rs.4 lakhs more than its legitimate share of the cost of Imperial burdens. A direct contribution by way of tribute along with these contributions is therefore clearly a payment in excess, one for which there is absolutely no justification whatsoever and which it is manifestly unjust to levy any longer.

The whole question of the abolition of tributes is merely one of an equitable adjustment of the financial relations of the tributary States with the British Government and of the cessation of contributions which are clearly proved to be in excess of the proper share of the contributing States to the cost of Imperial burdens. It does not arise from the need of obtaining the consent of the States to join the Federation, but owes its birth to the iniquitous system obtaining in India under which the tributary States are made to pay twice over for the protection which they enjoy in common with the other non-tributary States and Provinces. The question would in any case have come up for consideration before His Majesty's Government, especially after the finding of the Nind Committee that the States were making payments in excess of their share, and a financial settlement on the lines suggested by the Butler Committee could not have been

delayed any longer in the interests of the States affected. But before any action was taken on the reports of these two Committees, either by the States or by the Government of India, the proposal of an All-India Federation was adumbrated at the first Round Table Conference and the States did not press their claims, as they did not wish to prejudice the proposals which were then under discussion. The question was diverted into a new channel, and it became a part of the much bigger question of what the financial relations of the units towards the Federation should be. The Federation Scheme itself did not stand in the way of the extinction of tributes, but made their abolition all the more necessary and imperative by showing how inconsistent they were with the fundamental principles of federalism. But the terms of federation as they have finally emerged in the Act give these contributions a lease of life for a period of twenty years more and in doing so, have denied for some time to come a relief to which, federation or no federation, the States are justly and legitimately entitled.

The reasons given for such postponement are by no means convincing. Firstly, it is said that tributes are the States' counterpart of the contributions made by the Provinces in the form of income-tax, and that, so long as the latter continue to be in force, the States should also pay in their tributes. This was the view of the Indian States Inquiry Committee, and it has been shown how erroneous it is to regard the Provinces as making any contribution to the federal fisc. It might be fair, perhaps, to regard tributes as the counterpart of the so-called provincial contributions, as between British India on the one side and the whole body of the States on the other. But it cannot be defended as a just and equitable solution of the problem, for tributes are not paid by the States as a whole but by individual States and in widely varying proportions to their resources. If the problem is merely considered as one of striking a theoretically

correct balance between the Provinces and the States, there are many reasons why the Provinces should bear a much larger share of federal expenditure than the States. Some of the federal expenditure will be incurred for British-Indian purposes only, viz. in subsidies to deficit Provinces; and the service of part of the pre-federation debt should legitimately fall on the Provinces, as the States have derived no benefit whatever from such debts.

Moreover, even if tributes are regarded as the States' counterpart of the so-called provincial contributions, it will be found that the tributary States are, as a matter of fact, contributing much more than they would have done if they had made contributions 'in the form of taxes on income' like the Provinces. They maintain several services like the Archaeological, Meteorological and Geological Departments, which the Central Government maintains for the benefit of the Provinces; they keep in addition a body of well-equipped troops. This relieves the Central Government of the necessity of maintaining troops, as it has to do in the case of the Provinces, for the internal security of the States, and these troops are also placed at the disposal of the Central Government in times of emergency. The cost of these services and troops, along with tributes, is much more than the Central Government would have realized by imposing income-tax in the States. To take the case of Mysore again, the State would have paid a sum of about Rs.15 lakhs by way of income-tax if it were a British Province. But it would neither have paid a tribute of Rs.24.5 lakhs (now reduced to Rs.19.3 lakhs) nor maintained the State Forces for purposes of internal security and several other services at a cost of Rs.15 lakhs. In return for the payment of a sum of Rs.15 lakhs in the form of income-tax the State would have been relieved of burdens costing Rs.34½ lakhs. The State's contribution as a Province and as a State are as follows:

	Contributions	
	As a State.	*As a Province.*
	Rs. Lakhs.	
Income-tax	19.30	15.00
Tribute	—	—
Military Expenditure . .	14.50	—
Expenditure on other services	.77	—
Total .	34.57	15.00
Extra Burden	19.57	

The State would not have borne this extra burden of Rs.19.57 lakhs, which is nearly equivalent to its tribute, if income-tax had been realized from it as in a Province. The tributary States will thus occupy a highly invidious position in the Federation. They will have to support a burden heavier than they would have had to bear if they had contributed on the same basis as the Provinces. The extinction of tributes would equalize the burdens, and place the tributary States on the same level as the Provinces.

It is next said that it is not possible for the Federal Government to forgo the sum of Rs.72 lakhs (now amounting to Rs.63 lakhs after the recent remissions) entailed by the remission of tributes. The Federal Finance (Percy) Committee were clear on the point that only the probability of lack of resources at the Centre prevented them from recommending the immediate abolition of tributes.[1] The same reasons were given by the Secretary of State for India in his evidence before the Joint Parliamentary Committee. He said, 'I should very much have liked to have been able to move in the direction of extinguishing these tributes. The trouble has been nothing more than the financial situation; there has been no money available, and we have not been able to take a step that we definitely wished to take in the direction of extinguishing altogether tributes that we think should form no place in Federal Finance.'[2] This was said in

[1] *Report of the Federal Finance Sub-Committee*, para. 18.

[2] *Minutes of Evidence taken before the Joint Parliamentary Committee*, Question 8199.

1933 when the Government of India was affected by the economic crisis. Since then its finances have much improved and large sums of money are being doled out to the Provinces. The total amount of the subventions which it has been finally decided to give to the Provinces has increased far beyond what was originally contemplated and has exceeded all earlier estimates. No less than eight out of the eleven Provinces have been found unable to stand on their own legs and are subsidized to the extent of Rs.4.50 crores to place them 'on an even keel'. Heavy charges amounting to nearly Rs.9 crores have been imposed in recent years on the Central budget in the interests of the Provinces. Bengal is accorded 'special treatment' by the alienation in its favour of 62½ per cent. of the net receipts from the export duty on jute, however objectionable in principle such alienation may be. The States are not asking for any such 'special treatment', nor do they ask for any doles from moneys contributed by the tax-payers of British India. Even the poorest of them has always limited its expenditure within its means, found the money for paying its tribute, and never sought the aid of the Government of India to balance its budget. All that the States demand is the cessation of a levy which has been recognized by Committee after Committee to be manifestly unjust and to have no place in a federal constitution. It is a case of fiscal justice, pure and simple, which should have had priority over the claims of the Provinces for charitable doles. It is nothing short of a mockery to suggest, while the Provinces are treated on so generous and lavish a scale, that there is no money in the till for tendering bare justice to 212 States, though this justice would not cost one-sixth of what is given to the Provinces.

The terms of federation offered by the Act in this respect seem to be neither just nor equitable. There is no semblance of financial justice in a federation which perpetuates the existing iniquitous system for a period of twenty years to

come and condemns the tributary States to a compulsory contribution which neither the other non-tributary State-Members nor the Provinces are called upon to make, and for which no corresponding special services are rendered to them by the Federal Government. It appears as though the States are subjected to a gratuitous exaction and are asked to shoulder the burden of paying the money required for the large gifts given to the Provinces. There is no reason why the States should pay even for a day longer a contribution which, whether judged on grounds of a revision of their ancient engagements, or on grounds of a fair assessment of their liability towards the cost of imperial burdens, or on the much stricter principles of Federal Finance, should be blotted out of existence at once. The States should get the question settled before they join the Federation and should rest content with nothing short of the total abolition of these levies. It is to be hoped that the path of federation will be made smooth by the abolition of these age-long imposts so as to enable the tributary States to join the Federation on a footing of equality with the other units.

CHAPTER VII

CEDED TERRITORIES

CLOSELY connected with the question of tributes, and one which raises analogous considerations, is that of the territories ceded by the States in the past to the British Government. The alliances of the East India Company required from such of the States as entered the alliance either a fixed annual cash contribution, or a cession of territory estimated to bring in a net revenue equivalent to the cost of a specified number of troops, called the 'subsidiary force' maintained by the Company for the protection of the State. While many of the States agreed to pay an annual cash contribution in the form of tribute, five of them made cessions of territory in lieu of a recurring annual payment. The Nizam of Hyderabad transferred to the Company in full sovereignty in 1800 the districts of Bellary, Cuddapah, Anantapur, and Kurnool, which he had obtained as his share of the conquered territories of Tipu Sultan, for the maintenance of a subsidiary force, consisting of 8,000 infantry, 1,000 cavalry, and guns, which were to be 'ready to settle the affairs of H.H. the Nizam's Government'. The Maharaja Gaekwar of Baroda made assignments, from time to time, of large tracts of territory situated in the Bombay Presidency to defray the cost of troops 'ready at all times to execute services of importance, including the protection of the person of the Maharaja, his heirs and successors, overaweing and chastisement of rebels and exciters of disturbances in his territories and the due correction of his subjects or dependants who may withhold payments of the Sirkar's just claims'. The magnitude

of the cessions made by the Gaekwar may be imagined from the fact that he stripped himself of more than a third of his territories in return for a military guarantee by the Company. The approximate area of the territories transferred by him was 3,841 square miles, while the area which remained to him after this cession, and which is now in his possession, is 8,164 square miles. Similarly, the State of Gwalior ceded in 1844 and 1860 several patches of territory situated in the Central Provinces, Bombay Presidency, Central India, and Rajputana; and the State of Indore has made a similar cession for purposes of a military guarantee. The Ruler of the small State of Sangli in the Southern Mahratta country held his territories on a military tenure from his overlord, the Peshwa. On the downfall of the Peshwa, when the British Government succeeded to all his rights, the Ruler of Sangli was permitted to commute the service attached to his tenure by the cession of several villages in the Dharwar, Belgaum, and Bijapur districts. The territories thus ceded by the States have become an integral part of British India.

The number of troops and the amounts for which territories were ceded may be set down as follows:

	Number of troops for which the territories were ceded.	*Cost of the troops at the time of cession.* Rs.
1. Hyderabad .	8,000 Infantry 1,000 Cavalry and guns	24,17,000
2. Baroda .	4,000 Infantry 2 Regiments of native Cavalry 1 Company of European Artillery, and 2 Companies of gun lascars with necessary ordnance, warlike stores, and ammunition	22,98,000

	Number of troops for which the territories were ceded.	*Cost of the troops at the time of cession.* Rs.
3. Gwalior	6,000 Infantry with artillery and stores	11,78,000
4. Indore	3,000 horse	1,11,000
5. Sangli	For commutation from military service of a feudal character	1,35,000

When in the course of the discussions during the Round Table Conferences the Mysore representative, Sir Mirza M. Ismail, raised the subject of tributes and eloquently pleaded for their abolition, the question of ceded territories was for the first time raised by Sir Kailas Narayan Haksar, the representative of Gwalior, who pointed out that there was really no distinction between tributes and ceded territories, and that if the tributary States were entitled to a remission of their tributes under the federation, the States which had ceded territories were also entitled to some relief for their cessions.[1] This analogy was, however, questioned at the time, and it was pointed out that while the question of ceded territories represented a final and irrevocable transaction which could not be set aside, the case for tributes stood on an entirely different footing, viz. it was an arrangement liable to be revised in the light of existing circumstances. While there was thus practical unanimity in favour of the abolition of tributes, opinion as regards ceded territories was divided. As a matter of fact, both tributes and ceded territories have a common origin and purpose, and whether a State elected to pay a tribute or preferred to make over territory once for all in lieu of it, was purely an accident of history. The States which had ceded territories would also be making an exceptional contribution under federation,

[1] *Proceedings of the Federal Structure Committee*, vol. i.

like the tributary States, and enriching the federal exchequer by way of the revenues of the territories ceded by them. If, for instance, Gwalior enters the Federation contributing to federal resources on the same basis as the other units, asking for no special form of protection, and dispensing with the services of the subsidiary force, it would be making a contribution over and above what the other units do, by way of the revenues of the territories ceded by it. It is certainly entitled to some relief for making such an exceptional contribution and the only remedy would be to hand back the districts ceded by it.

The Indian States Inquiry Committee admitted the claims of the States in this respect but, as the Committee were given to understand that retrocession was out of the question, they recommended that some pecuniary compensation should be made to the States in place of it.[1] In making this recommendation the Committee were fully aware of the fundamental difference between the case for the abolition of tributes and the case for compensation for ceded territories. 'The idea underlying the remission of tribute is the relief of the State tax-payer from a burden which the other tax-payers of the Federation will not be called upon to bear, whereas any form of compensation in lieu of ceded territories would be to subsidize the tax-payer of the State at the expense of the tax-payers of the Federation.'[2] But as the Committee pointed out, such an anomaly was bound to arise, as the past could not be ignored nor the federal structure raised without any regard to what had gone before. The natural remedy would be to hand back the territories to the States, but if this was ruled out, some compensation at least was payable to them, though such compensation would be a very unsatisfactory substitute for retrocession from the point of view of the States.

As regards the amount of compensation, two alternative

[1] *Indian States Inquiry Committee Report*, para. 97. [2] Ibid.

suggestions were placed before the Committee by the States as the basis for the valuation of the ceded territories. In the first place, it was suggested that the financial adjustment should proceed on the assumption that retrocession had taken place. It should then be ascertained whether under the State system of administration there would not be a substantial surplus available. The States' system of administration is much more economical than the system of administration in British India, which is admitted on all hands to be very costly, and the States thought that, if this method were followed, the ceded territories would be found to yield a substantial surplus. But this suggestion did not commend itself to the Indian States Inquiry Committee, who were of opinion that any approach to the problem on these lines was too vague and general for practical purposes, and concluded that they were not prepared, therefore, to apply to the ceded territories the ordinary scales of pay and standards of State administration.[1]

The alternative suggested by the States was to ascertain the present-day cost of the military units specified in the treaties of cession and to credit the States with this amount. This suggestion also did not find favour with the Committee on the ground that 'the changes in military ideas and methods have been so far-reaching that any valuation of the present-day cost of troops specified over a hundred years ago would be merely misleading, and offers no prospect of a satisfactory solution of the difficulty'.[2]

After considering these two alternatives the Committee suggested a method of their own, which they realized to be open to certain objections, but which they believed to be the fairest under the circumstances. When the districts were surrendered a careful estimate of their values was recorded and accepted by both parties to the agreement. As it is now

[1] *Indian States Inquiry Committee Report*, para. 103.
[2] Ibid., para. 104.

desired to cancel this agreement, the Committee proposed that the net value of the territories as recorded at the date of cession should be taken as the basis of the compensation payable to the States.[1] The Committee further recommended that, as in the case of remission of tributes, the payment of this compensation should proceed *pari passu* with the payment of the proceeds of income-tax to the Provinces.[2]

Both these recommendations have been accepted by His Majesty's Government and the Act provides that, where any territories have been voluntarily ceded to the Crown by a State either in return for a specific military guarantee or in return for the discharge of the State from obligation to provide military assistance, there shall, if His Majesty, in signifying his acceptance of the Instrument of Accession of that State, so directs, be paid to that State, on condition that the guarantee is waived, such sums as, in the opinion of His Majesty, ought to be paid in respect of such cession. The payment of the amount shall commence by virtue of this agreement from the time that the Provinces begin to receive the moneys payable to them from the proceeds of income-tax.[3]

The sums payable to a State will be fixed by His Majesty when the State proposes to join the Federation, on the basis of the net value of the territories ceded by it at the time of the cession, as recommended by the Indian States Committee. The State in question will have to waive its military guarantee as a condition precedent to such payment. The State of Hyderabad has already intimated that it is not prepared to waive its military guarantee, but that it desires the continued maintenance of the subsidiary force which is now represented by the troops stationed by the British Government at Secunderabad.[4] Consequently, no question of any payment of compensation arises in the case of this State.

[1] *Indian States Inquiry Committee Report*, para. 105.
[2] Ibid., para. 164. [3] *Government of India Act*, sect. 147.
[4] *Indian States Inquiry Committee Report*, para. 116.

The other four States have not yet signified their intention, whether they will follow the example of Hyderabad, and insist upon the continued performance of the obligations undertaken by the East India Company. All things considered, it would be much better for them to accept the financial settlement provided in the Act than to insist on the continuance of a military guarantee which, however valuable and necessary it might have been in the days when India was torn by internecine warfare, has become out of date and practically superfluous under modern conditions. The Maharaja of Baroda no longer requires the aid of British troops for 'overaweing and chastisement of rebels and exciters of disturbances in his territories and the due correction of his subjects or dependants who may withhold payments of the Sirkar's just claims'. These functions are now looked after by troops maintained by the Gaekwar himself for purposes of internal security, and a military guarantee by the Crown for the same purpose is a luxury, which Baroda may very well dispense with. The four States would do well to waive their military guarantee which is as much a survival of the past as tributes. By doing so they would be entitled to receive handsome annuities from the Federal Government. Baroda would receive Rs.22.98 lakhs, Gwalior Rs.11.78 lakhs, Indore Rs.1.11 lakhs, and Sangli Rs.1.35 lakhs, which are equivalent to the net revenues of the territories respectively ceded by them to the British Government. These annuities would be paid to the States in accordance with the programme fixed for the payment of the proceeds of income-tax to the Provinces in the same proportion as that which the amount paid to a Province in any year bears to the full amount payable to it. If, however, for reasons which have already been stated, this programme is suspended and the distribution to the Provinces is delayed, the payment of compensation to the States would also be correspondingly postponed for a like period.

Closely connected with ceded territories was the question of Berar which was recently settled to the satisfaction of His Exalted Highness the Nizam of Hyderabad. This rich and fertile province known as 'the Garden of the Deccan' belongs to the Nizam, but it was assigned 'to the exclusive management' of the East India Company in 1853 in order to provide for the payment of a body of troops called the Nizam's contingent and the payment of the interest on a debt of Rs.50 lakhs which he had contracted with the Company. The province was estimated to yield an annual revenue of Rs.50 lakhs at the time of the cession and it was agreed that accounts should be annually rendered to the Nizam, and that any surplus of revenue which might accrue should be paid to him.

It is said that when it was proposed to the Nizam to cede Berar in satisfaction of his financial obligations to the Company, he resolutely refused to make any cession at all and made alternative offers of money in satisfaction of his debt and the expenses of the contingent. There were several interviews between Colonel Low, the British Resident, and the Nizam in which, according to one authority 'we insulted his dignity with unbecoming words'. At the same time, for several days, an English officer was deputed to examine the outworks of the city to note the defences, which he did openly, telescope in hand. Finally Major Davidson, the Assistant Resident, urged the Nizam's Minister to promote a speedy settlement if possible, as the British troops had orders to be ready to march on Hyderabad, and the Governor-General waited only for the word. Under this threat the Nizam reluctantly agreed to a compromise, and while refusing a cession, assigned 'the exclusive management of Berar and other lands to the East India Company'.[1]

Later, Sir Salar Jung, the celebrated Minister of Hyderabad, made more than one attempt to obtain the restoration

[1] Nicholson, *Scraps of Paper*, pp. 186–7.

of Berar by payment of a capital sum, but without avail. The matter, however, continued to be an irritant in the relations of the British Government with the Nizam, for although the revenue of the province had risen to Rs.119 lakhs a year, yet the surplus due to the Nizam had never exceeded Rs.19,73,000 in any one year since the cession and during a period of forty years had averaged something less than Rs.9 lakhs a year.

Lord Curzon, during his Viceroyalty, was desirous of bringing about an improvement in the relations between the Nizam and the British Government. He wanted to be generous to the Nizam and to Hyderabad—'to both of whom, perhaps, we owe some reparation'. He accordingly proposed a fresh arrangement by which Berar was to be leased to the British Government in perpetuity, in consideration of the payment to the Nizam by the British Government of a fixed and perpetual rental of Rs.25 lakhs per annum. When the Nizam was sounded on the subject he gave a blunt refusal to the proposal. But later, after a personal discussion with the Viceroy, he accepted the solution of the question which the Viceroy offered him. A fresh agreement was concluded providing for the lease of Berar to the British Government and the payment to the Nizam of a rent in perpetuity of Rs.25 lakhs, the Nizam's sovereignty over the province being recognized by hoisting his flag and firing a salute annually on his birthday.

Lord Curzon was, of course, aware that so sudden and complete an acceptance of his proposals by the Nizam was likely to excite the suspicion that he had brought undue pressure to bear upon him. And he hastened to reassure the Home Government upon the point. 'Now pray do not think', he begged the Secretary of State for India, 'that the Nizam yielded out of personal deference to me, or from weakness, or in alarm. He yielded in deference to my arguments and because he is firmly convinced that I am a friend

to him and his State. Nor need you be afraid of any remorse or regret on his part. I venture to assert that at this moment he is the most contented man in Hyderabad.'[1]

Soon after this agreement the Nizam was given the title of G.C.B. which was interpreted by some wag to mean 'Gave Curzon Berar'. Though Lord Curzon claimed that this agreement had 'laid the Berar ghost for ever', the question was raised again by the present Nizam, who challenged the agreement of 1902 and asked for a Commission to inquire into the whole case and for an account to be rendered of the pecuniary dealings between the two Governments. This claim elicited in reply the famous letter of Lord Reading, in 1926, in which the Nizam was sternly told that 'no Ruler of an Indian State can justifiably claim to negotiate with the British Government on an equal footing' and that the title of 'Faithful Ally' which His Exalted Highness enjoys has not the effect of putting his Government 'in a category separate from that of other States under the paramountcy of the British Government'.

His Exalted Highness, however, pressed the matter further, and as a result a new agreement was concluded in 1936 by which the British Government recognized and reaffirmed his sovereignty over Berar. According to the terms of this agreement the Nizam will continue to receive a sum of Rs.25 lakhs in respect of Berar as before, and his flag is to be flown alongside the British flag whenever and wherever the latter is flown in Berar. He may confer Hyderabad titles of honour upon the inhabitants of Berar with the previous consent of the Crown Representative, and with the consent of the same authority he may hold durbars in Berar. As a further recognition of the Nizam's sovereignty over Berar His Majesty has been pleased to confer on

[1] Ronaldshay, *Life of Lord Curzon*, vol. ii, pp. 218–19.

the Nizam and his successors the dynastic title of 'His Exalted Highness the Nizam of Hyderabad and Berar' and on the Nizam's heir apparent the title of 'His Highness the Prince of Berar'. The country, however, will continue to be administered by the British Government as before.

CHAPTER VIII

PRIVILEGES AND IMMUNITIES

Of the three factors which have complicated the introduction of a system of Federal Finance into India, two have been dealt with in the last two chapters, viz. the exceptional contributions which the tributary States will continue to make to federal revenues for some time to come and the contributions which a few other States will receive from the Federal Government, some time after federation, for having ceded territories in the past. There remain to be noticed the varying degrees of exemption which some States enjoy from the payment of certain federal taxes. The terms 'privilege' and 'immunity' are used to denote the extent of such exemption enjoyed by a State.

In an ideal system of Federal Finance all the units would contribute to federal resources on a uniform basis and no unit would be immune from contributing under a tax which the other units pay. But under the peculiar conditions in which the Federation of India is ushered into existence this ideal, however desirable, is impossible of attainment. A long series of relationships have come into existence in the past between the British Government and the States which can neither be ignored nor easily be brushed aside merely in pursuit after an ideal. Treaties and agreements have been concluded by the British Government with several States, conferring on them rights of a financial character which place such States in a privileged position in the Federation. By virtue of such agreements these States will be exempted from contributing to federal revenues through

the incidence of certain taxes in the same manner as the Provinces and the other States contribute. Such exemptions arise under sea customs and salt duties, currency and posts.

As regards sea customs, it has already been pointed out in the chapter on Federal Finance that some concessions will have to be made to the maritime States on their accession to the Federation. They are now levying a customs duty at their ports, and the retention by them, under the Federation, of the right to levy such a duty, which is *prima facie* a source of federal revenue, is very hard to reconcile with the true ideal of a federation. But it is equally hard to demand from these States the total surrender of a source of revenue which is now their mainstay. As a compromise, therefore, the maritime States are allowed to retain in their own hands the value of the duties on goods imported through their ports for consumption by their own subjects, thus conferring on them an immunity from federal taxation. A similar exemption will be possessed by the frontier State of Kashmir, though it is a land-locked State. By a treaty of 1870 this State undertook to refrain from taxing all merchandise passing through the State by the Central Asian trade route, thus establishing free trade between India and Central Asia. In return for the loss of revenue thus occasioned to the State, it was accorded the right of importing sea-borne goods in bond, free of customs duties at British-Indian ports. This right exempts the State from the payment of federal customs duties.

While the privileges of the States in respect of customs arise by virtue of their sovereignty, those relating to the salt tax arise under agreements of a commercial character. All salt production has long been a monopoly of the Government of India. Prior to 1869 great difficulty was experienced by the Government of India in protecting its salt revenue and ensuring its collection. Many Indian States possessed and worked their own salt works and placed their salt on the

British-Indian market. The Government of India was compelled in the interests of its revenue to create customs cordons against the salt-producing States of Rajputana, Central India, Cutch, Bahawalpur, and Kathiawar. The most important of these cordons stretched for 2,400 miles and was guarded by an army of 12,900 officers and men at an annual cost of Rs.16.25 lakhs. It consisted of 'a great impenetrable hedge of thorny trees and evil plants and stone walls and ditches, through which no man or beast could pass without being stopped or searched'. In 1869, however, these cordons were removed and a determined effort was made by the Government of India to extend its monopoly throughout India by entering into a series of agreements with the salt-producing States. An element of compulsion is regarded by the States as having been introduced in the conclusion of these agreements and a sense of grievance still persists. By these agreements the salt works in the States were either totally suppressed or their output was limited to a stipulated quantity. In return for such suppression the Government of India agreed to supply some of the States affected with as much untaxed salt annually as was required for the consumption of their people. Thus, the Mir of Khairpur agreed in 1884 to terminate all production of salt in his territories in return for the right to purchase, free of duty, as much British-Indian salt as might be required for consumption in his State. In other cases the States receive a fixed quantity of untaxed salt every year, in return for suppressing the production of salt within their territories. Such agreements embodying compensation for surrendered rights were concluded with nearly fifty States which owned and operated their own salt works. By virtue of such agreements these States, or their inhabitants, will be exempt from contributing to federal revenues through the incidence of the salt tax.

As regards currency, which is the next source of federal revenue in respect of which some privileges arise, the currency

needs of India are largely met by the coins and notes issued by the Government of India, which circulate both in the Provinces and in the great majority of the States. There are, however, some States which mint their own coins and which, consequently, unlike the other units, do not contribute to the currency profits of the Federal Government. It is highly desirable that the federal currency should circulate in all the units, but here again some allowance will have to be made in the case of States which possess their own coinage and currency. Such States number in all about twenty, but the Indian States Inquiry Committee found that the currency operations of these States, with the exception of that of Hyderabad, are so negligible as not to involve any serious competition with the federal currency, as their rights are limited to the minting of coins of low value or of coins which are used for ceremonial rather than for currency purposes. Hyderabad however, possesses a paper currency as well as a mint and the face value of its notes in circulation is more than Rs.9 crores. The possession of a separate currency is admitted by Hyderabad to be a source of profit to it. The Indian States Inquiry Committee estimated the loss to federal revenues arising from Hyderabad's right to supply its own currency needs at Rs.17 lakhs.

The last kind of privilege relates to posts. The Government of India has extended its postal system to almost all the States, but there are still some fifteen of them which maintain their own postal systems and value them as an emblem of their sovereignty. The Indian States Inquiry Committee considered the question whether any financial value should be attached to the retention of their own systems by the States, in other words whether the financial position of the Federal Posts and Telegraph Department would be improved by the accession of these States to postal unity. But they came to the conclusion that no cash value could be attached to the maintenance of separate postal

systems by the States, but that it constituted a privilege of a political and sentimental nature.

In extending its own postal system into the States, the Government of India agreed to give some States a free supply of service stamps for their official correspondence. The right to receive such a supply is now enjoyed by twenty-seven States, the annual total value of such grants amounting to Rs.3.12 lakhs. A review of past practice in this matter is said to reveal a degree of liberality hardly consistent with the fundamental principle by which alone they can be justified. Concessions seem to have been granted to certain States without any *quid pro quo* from them and the concessions granted to others have been liberally increased, even though in some cases such increases were specifically debarred by the terms of the original grants.

Several other States were induced to amalgamate their own indigenous postal system with the British-Indian system by the offer to carry their official correspondence free by means of the postal department of the Government of India. Seven States are in possession of such a privilege, and this places them in a preferential position in the Federation. For, while the Provinces and the other States have to pay full face value to the Federal Posts and Telegraphs Department for the carriage of their official correspondence, these States pay nothing at all to the Department for similar services rendered by it to them. The Indian States Inquiry Committee considered that the existence of this privilege involves a diminution of the earning capacity of the Postal Department and they estimated the amount which the Department would have earned but for the existence of this privilege at Rs.7.14 lakhs.

The above are the main kinds of privileges possessed by the States, and their total value is less than Rs.2 crores. If the States in question enter the Federation by giving up their privileges and contribute to federal revenues on the

same basis as the other units, the Federal Government will be richer by that amount. But they will not be willing to do so, and yet on this ground it is not desirable to exclude them altogether from the Federation. Nothing would be gained by such exclusion, for it would make very little difference to the States concerned. Their privileges would still have to be respected by the Federal Government, which inherits all the rights and obligations of the present Central Government and is bound by the agreements concluded by it with the States. The Federal Government will have to continue the free annual grant of postage stamps and the agreed quantity of duty-free salt and carry free their official correspondence, though the States in question may stand out of the Federation. On the other hand the existence of such privileges under the Federation would not affect central revenues to any greater extent than they do at present. Their continuance would mean nothing more than the maintenance of the *status quo*. The Indian States Inquiry Committee, who considered the whole problem, came to the conclusion that they were not prepared to recommend that a State should be compelled to choose between exclusion from the Federation and a complete surrender of its privileges. They apprehended that a mere insistence on uniformity would not only fail to advance the cause of federation but might greatly prejudice it.[1]

A few suggestions were made at the Round Table Conference for extinguishing these privileges. It was said that British India was concerned with the States as a whole and that the privileges of one class of States should be set off against the contributions made by the other. But unfortunately for federal finance, the States cannot be treated as a corporate body for the purpose of their entry into the Federation. As the Indian States Inquiry Committee pointed out, there is no connexion between the States as a whole such as

[1] *Indian States Inquiry Committee Report*, para. 442.

would justify this method of treatment of their respective credits and debits. For instance, Mysore, which desires remission of its tribute, derives no advantage from the fact that Bhavanagar enjoys exceptional privileges in regard to sea customs, and it is out of the question to set off the credits of the one against the liabilities of the other.[1] It was next suggested that the Federation should, in the interests of establishing uniformity of federal obligations in all the units, buy up all the privileges of the States by paying adequate compensation for them and thus place the States in the same position as the other units. The Indian States Inquiry Committee were asked to express an opinion as to what compensation it would be worth while for the Federal Government to offer in return for the relinquishment of the special privileges which each State enjoys or such modification thereof as might appear to the Committee to be an essential preliminary to federation. But the Committee found that the States in question were not prepared to barter away either their sovereign rights or the rights secured to them by agreements and this suggestion had to be dropped.

The Act proposes two methods for introducing some sort of uniformity by bringing about an equalization of federal burdens and benefits. It is provided that where the net proceeds of any tax or duty are distributed to a State by the Federal Government in any year, the value in and for that year of any privilege enjoyed by that State in respect of any former or existing source of revenue from a similar duty or tax shall, if the Act of the Federal Legislature authorizing the distribution so provides, be set off against the payment or distribution to the State.[2] The provision is based on the recommendation of the Peel Committee, that any distribution of the federal surplus should be subject to an exception in the case of States which impose taxes of a character similar

[1] *Indian States Inquiry Committee Report*, para. 97.
[2] *Government of India Act*, sect. 149.

to federal taxes.[1] By virtue of this provision, where the proceeds of any tax are distributed, the Federal Legislature cannot set it off against the value of any and every privilege of a State, but only against a privilege which arises under a tax or duty similar to the one levied by it. As thus limited this provision does not seem to bring about the desired result. It does not cover all the taxes under which privileges generally arise. The Act recognizes in the main four kinds of privileges, viz. those arising under maritime customs (import and export duties), duties on salt, currency, and post. The taxes which the Federal Legislature is authorized under the Act to distribute to the units are salt duties, duties of excise, and export duties.[2] There will thus be no question of any set-off in respect of the privileges under import duties, currency profits, and posts, as the Federal Legislature is not empowered by the Act to make any distribution of the net proceeds of such taxes. The only tax which can be distributed by the Federal Legislature and under which privileges are enjoyed by some States is the salt tax. If the Federal Legislature distributes the proceeds of the salt duty to the units, it can extinguish the salt-tax privileges of a State by setting off the amount distributable to the State against the value of its privilege. But it is very unlikely that the Central Government would ever carry out a distribution of the proceeds of the salt tax. Ever since the levy of the tax by the British Government, its proceeds have at no time been assigned to the Provinces. The Federal Government also would not distribute the proceeds of this duty, as it is one of the main sources of its income.

The second method proposed by the Act to equalize burdens and benefits is simpler and easier of application than the first. It is provided that the value of the privileges of a State shall be set off against its tribute and only that

[1] *Peel Committee Report* (1931), para. 14.
[2] *Government of India Act*, sect. 140.

portion of the tribute which is in excess of the value of its privilege shall be remitted. Similarly in fixing the amount of compensation payable to a State for ceded territories account will be taken of the value of its privileges.[1] This provision gives effect to the recommendation of the Indian States Inquiry Committee that, whenever it is proposed to remit a tribute or to pay a contribution as compensation for ceded territories, the value of any privilege or immunity from ordinary federal burdens shall be set off against the proposed credit, and that no remission or payment shall be made unless the credit exceeds the debits, and then only to the extent of the balance.[2]

To illustrate the manner in which this method would work out in practice, Mysore is entitled to a remission of its tribute which amounts to Rs.24½ lakhs. It enjoys at the same time the privilege of having its official correspondence carried free. The value of this privilege is estimated to be about Rs.5.57 lakhs, and this amount will be deducted from its tribute, and only the balance of Rs.18.93 lakhs will be remitted. The process of this remission would be in accordance with the programme fixed for the payment of the proceeds of income-tax to the Provinces described in chapter V. The State of Baroda pays a tribute of Rs.3.75 lakhs and is also entitled to receive a contribution of Rs.22.98 lakhs from the Federal Government as compensation for territories ceded by it. The total of its credits is thus Rs.26.73 lakhs. The State enjoys at the same time several kinds of privileges under customs and salt duties and free supply of stamps. The total value of these privileges is Rs.5.05 lakhs. This amount will be deducted from its credit and only the balance of Rs.21.67 lakhs will be paid to it *pari passu* with the payment of the proceeds of income-tax to the Provinces. Similarly the State of Jodhpur pays a

[1] *Government of India Act*, sect 147.
[2] *Indian States Inquiry Committee Report*, para. 443.

tribute of Rs.1.15 lakhs and the value of its privileges is Rs.4.23 lakhs. There will be no remission of its tribute as the value of its privileges greatly exceeds its tribute.

This method of dealing with the whole problem creates greater anomalies than it is intended to cure. It places the non-tributary States in a specially privileged position and allows them to remain in perpetual possession of their privileges. No question of ever extinguishing their privileges arises as they do not pay any tributes. There are some thirty of such States, and they are Alwar, Bahawalpur, Bashahr, Banganapalli, Bharatpur, Bikanir, Datia, Dholpur, Faridkot, Idar, Jaisalmere, Janjira, Kalsia, Karauli, Kashmir, Khairpur, Kishangarh, Loharu, Malerkotla, Mangrol, Palanpur, Pudukottai, Radanpur, Rampur, Rewa, Samthar, Savantwadi, Sikkim, Sirmur, and Wao. Some of these States (e.g. Alwar and Bikanir) will remain in possession of privileges of more than one kind.

Secondly, the tributes of some States will not be remitted at all, as the amount of their tributes is less than the value of their privileges and no balance to rank for remission remains to their credit. They will continue to pay in their tributes for all time, though perhaps under the somewhat different name of 'payment for privileges'. There is no hope of their tribute ever being remitted unless they surrender their privileges. Such States number fourteen, and they are Bhavanagar, Cambay, Cochin, Cutch, Junagadh, Jaipur, Jodhpur, Lawa, Morvi, Nawanagar, Porbander, Travancore, Sirohi, and Tonk.

Thirdly, the tributes of some States will only be remitted in part. These are the States whose tributes exceed the value of their privileges, and when the latter are set off against the amount of their tributes there still remains a balance in their favour which would rank for remission. But these States will have to continue the payment of the unremitted portion of their tribute for all time. They are Bhopal, Bundi, Cooch-

Behar, Dhar, Jhallawar, Jhinjhuwada, Jubbal, Kotah, Mandi, Mysore, Panna, Patdi, Shahpura, and Udaipur.

By the application of this method the privileges of certain tributary States would be either fully or partially extinguished, while certain other non-tributary States would remain in perpetual and undisturbed possession of their privileges. The reason for this is obvious. In the case of the tributary States the British Government has acquired, by an accident of history, a hold in the form of tributes which is now to be made use of as a lever to extinguish privileges which in the majority of cases have been paid for and purchased for full value by the States. The British Government can enforce a payment for such privileges by refusing to forgo that portion of the amount of their tributes which is equivalent to the value of their privileges. In the case of the non-tributary States, there exists no means of bringing about an extinction of their privileges.

Apart from its unfairness such a procedure would result in inflicting a grave injustice on some of the tributary States if it were applied strictly and without any discrimination. The rights which are now counted as privileges were acquired by the States in return for valuable rights surrendered by them to the British Government. The right of having its official correspondence carried free by the British-Indian postal department was not conferred on Mysore gratuitously by the Government of India, but was obtained by the State for valuable consideration. The State had an efficient postal system of its own, cherished by both the rulers and the people as an ancient and time-honoured institution. It was established as far back as the seventeenth century by Maharaja Chikka Devaraja Wadiar, an ancestor of the present Maharaja, who as an eminent soldier and statesman occupies a distinguished place in the history of Mysore. The *anche*, as it was called locally, was more than a postal service; it also performed several police functions.

'It was not only as in England the passive instrument for conveying intelligence, but the actual agent for obtaining it. The postmasters at the several stations were, in addition to their passive duties, what in the modern vocabulary of Europe would be named confidential agents of police.'[1] The system was working efficiently and satisfactorily, and the Government of India, which had also established its post offices in Mysore, found it very difficult to compete with the local *anche*. So the Government of India made an offer to amalgamate the indigenous system of the State with the British-Indian postal department and to carry its official correspondence free within State limits. This offer was accepted by Mysore in 1889 and the whole transaction bore on its face the features of a commercial contract creating reciprocal rights and obligations. The State surrendered its sovereign right of maintaining its post offices and the Government of India acquired the exclusive right of establishing its own post offices within the territories of Mysore, the price paid for this right being the free carriage of State mails on Government business. At the time of the amalgamation the Mysore *anche* was carrying such mails free and was also working at a considerable profit.

The Act now treats the right secured to Mysore under the agreement of 1889 as though it were nothing short of a gratuitous concession shown to the State, and proposes to bring about its extinction. It is estimated that if the articles now carried free for the State, according to the terms of the agreement, were paid for, the revenue accruing therefrom to the postal department would be Rs.5.57 lakhs. It is proposed that a sum equivalent to this amount should remain unremitted in the Mysore tribute, and that the State should continue to pay it so long as it remains in possession of its right. It is somewhat difficult to understand the logic behind the Act. While the maintenance of a

[1] Wilks' *History of Mysore.*

separate postal system by a State is not counted as a privilege to be set off against its tribute, an arrangement which was adopted in lieu of it is regarded as a privilege and its value is to be set off against the tribute. While Travancore, Cochin, and Jaipur may maintain their own postal systems under the Federation, and there is no question of treating them as a privilege and setting them off against the tributes of the States in question, Mysore, which helped the Government of India to establish postal unity, is to be rewarded by having a portion of its tribute unremitted. This is not merely illogical but financially unjust to Mysore. If the State is to pay full face value for the carriage of its official correspondence and its right under the agreement of 1889 is to be extinguished, it *ipso facto* terminates the exclusive right of the Government of India to establish post offices in Mysore. The Government of India cannot have it both ways; it cannot extinguish the right of Mysore while retaining its own right intact. The State should be at liberty to revive its postal system, and if this is done the whole of its tribute would rank for remission, its official correspondence would be carried free by its postal system, and it would also make a considerable surplus by working its post offices as it did before.

The same considerations apply to all the privileges which have been acquired by the States for valuable consideration. The privileges of Bhopal and Pudukottai were obtained on the same terms as those of Mysore, viz. by the surrender of their own postal systems in return for the free conveyance of their official correspondence by the Government of India. Every one of the privileges in respect of salt was acquired by the States under salt-agreements by which they undertook to suppress the manufacture of salt within their territories, though such suppression entailed for them a heavy financial loss at the time. But for these agreements it would have been impossible for the Government of India to estab-

lish postal unity in India or to extend its salt monopoly into the States. And without such unity the prospect of an All-India Federation would have been very remote indeed. It would be unjust now to extinguish the rights secured to the States under these agreements by attaching a cash value to them and setting them off against the tributes. The Act gives full power to His Majesty to exclude from the operation of this rule any privilege which in his opinion is such as ought not to be taken into account for purposes of being set off against the tribute. This power should be exercised freely and all privileges which have valuable consideration to support them should be excluded from the operation of this rule. Otherwise a grave injustice will be done to the tributary States. They will be making a double payment for the same right, for they paid once when the right in question was acquired by them, and now they will be paying again perpetually in a portion of their tributes.

CHAPTER IX

CANTONMENTS AND CIVIL STATIONS

WHILE the ceded territories were transferred by the States to the British Government in full sovereignty there are several large tracts of State-territory which are only administered by the British Government without prejudice to the ultimate sovereign rights of the States. Such are the Cantonment of Secunderabad in Hyderabad, the Civil and Military station of Bangalore in the Mysore State, the Cantonments of Neemuch and Mhow in Gwalior, the civil stations of Rajkot and Wadhwan, and a few more areas in other States. Full civil and criminal jurisdiction over these tracts has been assigned by the States, for certain well-defined purposes, to the British Government, which administers them under the Foreign Jurisdiction Act. Such an assignment, however, does not extinguish the sovereignty of the States, which remains dormant so long as British administration continues, but is revived when that administration is withdrawn from them. These tracts do not call for any financial settlement between the Centre and the States but raise considerations of a wholly different character.

The areas known as Cantonments were originally assigned by the States for the use and occupation of British troops, and the areas which go by the name of Civil Stations and Residency Bazaars were given by them for the residence of the British Resident and his civil staff. But, in course of time, the original purpose came to be totally ignored and the tracts have been used for a variety of purposes. The Civil Stations have become much more extensive than is

required for the actual residence of the British Resident and his subordinate staff, and the Cantonments are not used for military purposes except in a minor way. They have been converted into regular colonies, and a civil population which is quite unconnected either with the Residency or the troops has come and permanently settled down in them. Some of the tracts have become large centres of trade and commerce. All the same they are still retained by the British Government and administered by it through the agency of its political officers, and the States are deprived, for no apparent reason whatever, of all control over a portion of their territories. A rival administration, with its own civil and judicial systems and its own code of laws, has thus come into existence in the heart of the State territories. Thus the Nizam's *firman* does not run in the Cantonment of Secunderabad which is situated only a few miles from his capital, and the Maharaja of Mysore has no legislative or administrative powers over the Civil and Military station of Bangalore though it is a part of his administrative capital of the city of Bangalore. Very often these tracts serve as an asylum for those who are disaffected with the rulers of the States and desire to further intrigues which would bring them within the laws of the State. For years a seditionist paper which reviled Travancore and its rulers was printed and published at Thangaserry, a small strip of British territory in the State, hardly measuring a hundred acres. The Maharana of Udaipur complained in 1921 that agitators, who had made Ajmer their base, were fomenting discontent among the ignorant peasants of his State.[1] The difficulties arising from the existence of these 'British enclaves' were picturesquely depicted by the veteran Indian statesman, Raja Sir T. Madhava Rao, in a letter to the British Resident. He said: 'If I were called upon to give a hypothetical case merely to enable an Englishman to realize the difficulties and perplexities entailed

[1] Panikkar, *The Indian States and the Government of India*, p. 79.

on us, I would offer the picture of the German Ambassador in London demarcating a certain area around his residency, inviting lots of the London population to settle around, claiming within such area the right of administering German laws and German system in general, and claiming for the whole settlement supplies totally exempt from the taxes of England.'[1] The British Government seems to have latterly realized these difficulties and it is now gradually divesting itself of the administration of these tracts. The Residency Bazaars of Indore and Hyderabad have been retroceded to the States in recent years.

By far the most important of these tracts is the Civil and Military Station of Bangalore in the Mysore State, which may be taken as typifying the many inconveniences to which the existence of isolated 'British enclaves' in the very heart of the States inevitably leads. The Station covers an area of 13·5 square miles and has a population of 134,113. A proposal for retrocession is reported to have been under the consideration of the British Government for some time past, but to have met with some opposition in a few quarters. Wholly incorrect, and sometimes even fanciful accounts of the origin and development of the Station have been given, and these seem to be responsible for much of the opposition to the proposal. It is said that the lands now forming the Station were absolutely alienated by the then Maharaja of Mysore in favour of the British Government more than a century and a quarter ago for the use of British troops; that the inhabitants there were encouraged to settle and build houses in it on the strength of titles granted to them by the British Government; and that the Mysore State has reserved no rights whatsoever to demand its restoration now. If these were the facts of the case, they would put an end to the whole matter and there could be no question of any retrocession to the State. But historical documents tell a different

[1] Quoted in Nicholson's *Scraps of Paper*, p. 134.

tale and the story of the British occupation of Bangalore fully bears out the claims of the State for retrocession.

After the defeat and death of Tipu Sultan in 1799 some British troops were garrisoned in Seringapatam. But it was soon found that the climate there was very unsuitable to the troops, and the Madras Government, which in those days had the control of its provincial army and its cantonments, was forced to seek a healthier station. It finally pitched upon some lands near the city of Bangalore, known in those days as the 'Pettah of Bangalore', for the purpose, and approached the Maharaja of Mysore, Sri Krishnaraja Wadiyar, the grandfather of the present Maharaja, for permission to occupy them. This was readily granted and a vacant site was given by the Maharaja for the accommodation of the troops. It was accordingly occupied in 1807 by two British regiments, and barracks and other military buildings were erected on it. In making this grant the Maharaja gave the lands in the same way as he would have given them to any private individual and conferred no rights on the Madras Government to set up in them an independent administration of its own. He was also careful to make it clear that the possessions of the Madras Government extended no further than the lands actually occupied by the barracks, parade-grounds and the houses used for the accommodation of military officers. Gradually, a civil population, attracted by the opportunities for profit and employment afforded by the presence of the troops, desired to settle around the military lands. As these lands were not in the possession of the Madras Government, applications for lands for building residential quarters were made to the 'Sirkar' or the 'native authorities' of the State. The procedure usually followed in such cases may be seen from the following instance. One Captain Garrard, who was the Superintending Engineer in Bangalore in 1816, wanted to acquire some land near the barracks, and he applied for it to the 'native authori-

ties'. This circumstance was reported by them to the *fouzdar* or the revenue officer of Bangalore in these words: 'This land is required to be made over to the Sahib [Captain Garrard] who is to pay the price of the trees that are on the ground. The crops now grown should be reaped by the ryots before they can part with the land. Captain Garrard says that if the land is given to him, he will act agreeably to the Raja's *niroop* [order].' The *fouzdar* reported the matter to the Maharaja and, after obtaining his consent, sold the land to Captain Garrard. The old title-deeds explicitly recite that the land was granted 'with the approbation and by the authority of the Raja', thus placing it beyond all doubt that the titles to the land on which the residential quarters of the Station are built, were derived from the Maharaja himself, and not from the British Government, as is erroneously supposed by those who oppose the retrocession of the Station. As a matter of fact the British Commanding Officer did not regard the civil population with any favour. He looked upon them as little better than 'squatters'.

In a short time a small town came into existence around the barracks, thanks to the liberal grants of land made by the Maharaja to the civil population for their settlement. The presence of British troops in the middle of the town made no difference to its administration. Its police arrangements were the same as those in a standing camp; that is to say, the Commanding Officer had the power to punish all persons belonging to the troops, but he had no authority over the civil population, which remained subject to the jurisdiction of the 'Sirkar' like the inhabitants of any other town in the Maharaja's dominions. The Madras Government now desired to acquire the entire town for itself and administer it as one of its cantonments. It commissioned the British Resident attached to the Maharaja's Court, Mr. A. H. Cole, to request the Maharaja to transfer the administration of

the town to its Commissariat Department after explaining to His Highness the nature of the arrangement. The matter was accordingly negotiated by Mr. Cole, and the Maharaja, young though he was at the time, seems to have fully realized the far-reaching consequences of such a transfer. He steadfastly refused to divest himself of his authority over what promised to be one of the most important of the towns in his dominions. But the town was too tempting an object for the Madras Government easily to acquiesce in the Maharaja's decision. After some time it again requested Mr. Cole to obtain a transfer from the Maharaja, but this time also the efforts of Mr. Cole fared no better. In deference, however, to the wishes of the Madras Government, the Maharaja consented to appoint a British officer as the Superintendent of Police, under his own authority, to supervise the police arrangements of the town.

In 1831 a British Commissioner was appointed to manage the affairs of Mysore on behalf of the Maharaja, and he established the head-quarters of the Mysore Government in the town, which then acquired an additional importance. It then came to be known as the Civil and Military Station of Bangalore, and began to grow rapidly in all directions. It became more attractive in the eyes of the Madras Government, which apparently believed that any assumption of authority by it in the Station would be acquiesced in by the Commissioner, and that it could now easily get what the Maharaja had refused to concede before. It claimed to treat the Station as though it belonged to it and the reasons given by it in support of its claims were exactly the same as those which are now used for opposing the retrocession of the Station to the State. It urged that the Maharaja had made over the Station to itself and that the Station had been considered as 'a British Station' from the time the British troops occupied it in 1807. The British Commissioner, Sir Mark Cubbon, proved himself as zealous a guardian of the rights

of the State as the Maharaja himself. He denied all the claims of the Madras Government and stoutly resisted all assumptions of authority by it in the Station. Finally, the Government of India had to intervene in the matter and put an end to a controversy which threatened to be somewhat serious. It turned down the claims of the Madras Government with the observation that the Maharaja had not totally alienated all his rights over the Station and the fact that a British Commissioner happened to be at the head of Mysore affairs did not confer on the Madras Government any more rights than it had actually obtained from the Maharaja.

This set the matter at rest and the Mysore Government continued to administer the Station as an integral part of the State. In the meantime, the attitude of the British Government towards the States had undergone a change after the suppression of the Indian Mutiny and the consolidation of British supremacy in India, and it let slip no opportunity of extending its power at the expense of the States. This was clearly shown in the case of the Civil and Military Station of Bangalore. The Government of India which had so generously come to the rescue of the Mysore State to preserve the Station from the encroachments of the Madras Government now desired to acquire it for itself as one of its cantonments. An opportunity for doing so offered itself in 1881 at the time of the transfer of the administration of Mysore to the Maharaja. Since 1831 the Government of India had administered the State 'for and on behalf of Maharaja' of Mysore and in 1881 it had to rendition the administration to him. The Government of India then occupied the delicate position of a trustee whose duty it was to act in a disinterested manner and not make a profit for himself by driving an unconscionable bargain with the *cestue que trust*. But the fiduciary character of the relationship which subsisted between the Maharaja and the British

Government was completely overlooked at the time, and conditions which were considered to be really onerous were imposed on the Maharaja at the time of putting him in possession of the administration of his territories. His tribute was increased from Rs.24½ lakhs to Rs.35 lakhs, and he was also asked to cede jurisdiction over the Civil and Military Station of Bangalore. Under the peculiar circumstances which then existed, it was not possible for the Maharaja to refuse compliance with the demands made on him. He was so completely in the power of the Government of India at the time that it felt confident of easily securing his consent even to the total annexation by British India of any part of his territories which it might desire to keep in its possession.[1] It limited its demands, however, to a cession of jurisdiction over the Station, and when a formal demand was made for it, the Maharaja had no option left to him but to comply with it. By a deed of assignment, executed only ten days after the assumption of the administration of his country, the Maharaja made over the administration of the Station to the British Government stipulating that it should be used for 'purposes of a cantonment'.

This assignment has divided the City of Bangalore, which in point of population is the ninth in India, into two halves and placed each half under a separate administration. The State half serves as the head-quarters of the Mysore Government, while the British half is administered by the Resident at Mysore, who remains responsible to the Government of India for its proper administration. The total population of Bangalore is 306,460. Out of this number 172,357 live under the State jurisdiction and 134,113 under the jurisdiction of the British Government. It is practically impossible under the circumstances to administer the assigned tract in total isolation from the rest of the State. Even for bare necessities

[1] Letter dated 3 March 1880 from the Governor-General to the Secretary of State for India.

of life like water and lighting the inhabitants of the Station depend upon the State Administration which supplies them with cheap water and cheap electricity, and as regards medical aid, they freely resort to the institutions maintained by the State within its jurisdiction. The difficulties arising from the artificial division of the city into two halves, each being administered by an independent authority under different sets of laws, may be imagined. The development of the city is greatly hampered, for schemes of development in matters like water supply, sewage farms, and drainage, can hardly be pursued as combined propositions under a single progressive policy, but separately under different administrations.

The inhabitants of the Station, like the people living in tracts of similar status in other States, are placed in a somewhat unenviable position. They have no political rights whatsoever. They have no voice in the British-Indian Legislature, for though they remain under British administration the area which they inhabit is not British territory. Nor have they any representation in the Mysore Legislature, for though they reside in State territory they do not come under its administration. Their grievances can be heard neither in the Council Chamber at Delhi nor in the Legislative bodies of Mysore. They are, as one Memorandum protesting against the retrocession of the Station to the State admitted, 'in fact nobody's children, as it were'. Judicially the people of the Station have no access to a tribunal like a High Court, but depend on the decisions of a Political officer who is also the Executive Head of the Station. As regards trade, it is unnecessarily hampered by each half levying octroi against the other, and each having its own rules for licensing, controlling, and taxing motor vehicles, although these ply in both the jurisdictions. As regards taxation, they have to support a heavier burden than their neighbours living on the other side of the city. The cost of administration is very

high, and for an area which really forms one-half of a city, there is a Resident with a salary of Rs.4,000, one-third of which is charged on the revenues of the Station, a Collector on a pay of Rs.1,900, a Residency Surgeon on Rs.2,000, a District and Sessions Judge on Rs.900, a Commissioner of Police drawing Rs.1,600, a Magistrate with a salary of Rs.850, with a hierarchy of lesser officials; while the State officers of similar rank and status, who are no less efficient, receive smaller salaries though they exercise their functions over a much wider area. There are, in fact, eight officers drawing a salary of more than Rs.800 for the administration of the Station.

The entailment of all these disabilities on the people would have had at least some justification if the Station had been used for the purpose of a cantonment for which alone it was originally obtained from the Maharaja. But it is only used for that purpose to a limited extent. The number of troops stationed in it does not exceed 1,300, and such a small number obviously does not require for its accommodation so large a space as 13·5 square miles nor a civil population of 134,000 to cater for it. Nowhere in India is such a large and populous area administered by the British Government as a cantonment for the sake of 1,300 troops. The military area which may be said to be used for 'cantonment' purposes, as stipulated in the deed of assignment, occupies in fact a small part of the Station. The remaining areas are used for a variety of purposes for which the Maharaja of Mysore could be under no obligation under the Mysore Treaty to cede lands to the British Government. These areas should therefore revert to the State, as they are not used for the purposes stipulated in the deed of assignment.

A formal demand seems to have been made by the State in 1924 for the retrocession of the Station or, at any rate, that part of it which is not required for military purposes; and since then it has been pressing for an early settlement of

the question. Such retrocession is imperatively necessary also in the interests of the inhabitants of the Station. It would totally do away with their existing disabilities and confer on them rights to which they are now perfect strangers. It would for one thing mean lesser taxation for them. They would secure the right of representation in the legislative bodies of Mysore, a right admitted even by those who oppose retrocession to be one of 'the pleasing aspects' of retrocession. The administrative inconveniences arising from the present state of things would be brought to an end.

Though retrocession is thus beneficial to the people living in the Station, yet it is opposed by an obstreperous section of the Anglo-Indian and the Domiciled European community residing in the Station, and by two or three other Associations, claiming to speak on behalf of the people. In a joint Memorandum published by them some time back, expressing their views on the subject of retrocession, it was said that the Station did not belong to the Mysore State, as it had been absolutely transferred by it to the British Government as far back as 1809. This, as already shown, is wholly unhistorical and erroneous. It was next urged that the inhabitants of the Station were British subjects and as such they could not be transferred to the Mysore Administration according to the principle 'laid down and generally recognized that British subjects should not be transferred to an Indian State without their consent'. But the principle has not at any rate been so 'well recognized' as to find a place in the so-called 'usage' and 'political practice' of the Political Department. Mutual exchanges of territory have taken place in the past between the British Government and the States for the rectification of boundaries and the like. One has only to go through Aitchison's *Treaties, Engagements and Sannads* to see how often such transfers of territory have taken place in the past. But there has not been a single instance where either the British Govern-

ment or the States have followed the principle of consulting the wishes of the people affected before making such transfers or before effecting cessions of jurisdiction over large tracts of territory. The principle was not applied at the time of the original assignment of the Station to the British Government in 1881. If it had been applied then it would perhaps have prevented the assignment altogether. In recent years the Residency Bazaars of Hyderabad were restored to the Nizam, the cantonment of Sehore to the Nawab of Bhopal, and the Residency Bazaars at Indore to Maharaja Holkar. But in none of these cases had the people any voice.

Moreover, the principle cannot be applied to the case of the Civil and Military Station of Bangalore for it is not a case of British territory being transferred to the Mysore State. The constitutional status of the Station was explained by no less a jurist than Lord Reading, who as the Governor-General of India, in replying to an address presented by the Municipal Commission of the Station praying for representation in the British-Indian Legislature, observed: 'Aspirations to share in the responsibility for administration and for representation always command my respect. You must, however, remember that in your case, your suggestion is hedged round with difficulties arising out of the history and special conditions of the Assigned Tract. This Tract, you are aware, is not British India, but is a portion of an Indian State assigned to the Government of India to be held and administered as a Military Station. The permanent status of the Tract is that of an integral part of Mysore State, though for a special reason, the administration of this portion of State territory is carried on by a Resident, responsible to the Government of India.' The Station has never ceased to be Mysore territory, and the Maharaja's sovereignty over it has not been extinguished by the assignment. As an admission of his sovereignty it has been conceded that the surplus

of revenue, after paying the expenses of the administration, should be made over to the State, and His Highness the Maharaja gave evidence of the spirit in which he viewed this concession by making a gift of Rs.50 lakhs out of the first payment of this surplus to the British Government towards the expenses of the War. The inhabitants of the Station are subjects of Mysore, owing allegiance to the Maharaja, with the exception of several thousand British subjects consisting mostly of mill operatives from British India, and a few thousand Anglo-Indians and Europeans of the pensioner class who, being attracted by the healthy climate of the Station and the civic and social amenities provided by the State, have found it convenient to fix their abode there and regard it as 'a Pensioner's Paradise'. These should be presumed to have known that in migrating to Bangalore they were settling in a part of the Mysore territory which was liable at any moment to revert to the State. The fact that they have fixed their domicile for the time being in the Station does not in the least affect the reversionary rights of the Maharaja, and the suggestion that they should have a voice in determining the fate of the Station is, to say the least, quite unreasonable. It would be as legitimate for the Japanese population in Calcutta to suggest that they should have a voice in determining who should govern the city in which they have settled.

The fears expressed by this section of the Anglo-Indian and European Community that their vested interests would suffer by retrocession have repeatedly been shown to be quite unfounded by several responsible European business men who have spent their lives under the State Administration. Several thousand Europeans and Anglo-Indians have permanently settled in the coffee districts and the mining areas of the State for the past half-century and more, and not one of them has a single cause of complaint against the State Administration. One of them who has

spent twenty years in the State and has been a member of the Mysore Legislative Council for several years, has expressed his opinion that 'the European and Anglo-Indian residents in the Station need have nothing to fear'[1] from retrocession. The Dewan of Mysore, Sir Mirza Ismail, has also given his assurance to the community that their vested interests would not suffer by retrocession. The Roman Catholic community, which owns and runs several large educational institutions in the Station, has stated that it 'has no objection to going under the Government of Mysore'. The Council of the Anglo-Indian and Domiciled European Association, Kolar Gold Fields' Branch, which is the largest Branch of the Association in India, has, with special reference to this very question of retrocession, passed a resolution to the effect that 'their experience of living under Mysore Government compels them to say that they consider it a privilege to live under such an administration'. This should go a long way in allaying the fears of the Anglo-Indians of the Station. Their position after retrocession will be the same as that of the Anglo-Indians now living under the State jurisdiction and the even tenor of their lives will not be disturbed in any way by the step. The standard of administration in Mysore compares favourably with that of the British Provinces, and there is not a single disability to which they would have to submit by coming under the Mysore Government. Happily the little opposition that manifested itself at the beginning has fast disappeared with the growing realization of the people that they stand to gain more by retrocession than by the maintenance of the *status quo*.

The complaints that are now made by the Anglo-Indians and Europeans living in the Station recall those that were made in 1867 by the coffee-planters of Mysore. The question then was the transfer of the administration of the entire State to its Maharaja, and it was pending before Parliament.

[1] Mr. Ralph Nye's letter in *The Times*, 4 June 1934.

The coffee-planters were greatly agitated over it, even as the present-day Anglo-Indians and Europeans of the Station are agitated. One responsible British officer wrote to say that if Mysore were transferred to the Maharaja 'millions of people would be surrendered to the dangers of misrule and the greed of needy courtiers who would outbid one another for the privilege of plundering the people; everything would fall into pieces, the finances of the country would be dislocated and the people themselves would clamour in no short time for the re-introduction of British rule'. He rounded up by saying that 'the European interests as represented by settlers, are of great importance and in the districts where they have settled no native officer could cope with executive details'. But Parliament took a different view of the question and decided to transfer the administration of the country to the Maharaja. The Europeans did not stage an exodus at the time, but they came and settled in much larger numbers in the coffee and mining districts and in settlements, as at Whitefield and Sausmond. The State has belied all the prophets who foresaw calamity at the time and stands foremost among the Indian States, challenging comparison with the British Provinces in point of its administrative efficiency and its efforts to promote the welfare of the people. The European planters have found that, so far from suffering under Mysore rule, they have a sympathetic government, and consider it 'a privilege to live under such an administration'. There can be no doubt whatever that fifty years hence the inhabitants of the Station will similarly be congratulating themselves upon the fact of retrocession.

Proposals for the retrocession of cantonments and civil stations to the States to which they belong have been criticized on the ground that they are inducements offered to the Princes to join the Federation, and the proposed retrocession of the Civil and Military Station of Bangalore has

been quoted as an instance of such inducements. It is said that 'the Hindu State of Mysore, the second largest in India with a population of six and a half millions, besides remission of an annual tribute of about £187,000 per annum, is being encouraged to believe that its request to have retroceded to it the civil station of Bangalore will be granted in the event of its coming into the Federation'.[1] It has been shown in the chapter on 'Tributes and Cash Contributions' how baseless such an accusation is so far as tributes are concerned, and how inequitable and unfair it is to expect Mysore to go on paying a contribution which, from any point of view, ought to have been extinguished long ago. The charge with regard to the Civil and Military Station is equally baseless. The question of the retrocession of this Station was raised by the Mysore State on several occasions. It was raised in 1912, in 1924, and again in 1932, and on all these occasions it was raised on its merits. It had been pending for a long time and even if there had been no question of a federation, His Majesty's Government would have been called upon to settle it. As was observed by Sir Samuel Hoare: 'It is one of those questions which, whether there is a Federation or whether there is not a Federation, has got to be settled, and the sooner it is settled the better for the relations between the Government of India and the great State of Mysore.'

If the position of the cantonments and civil stations in the States is highly anomalous under the existing state of affairs, it will be still more so under the new Constitution. It was therefore proposed by Sir Mirza Ismail, before the Consultative Committee, that they should be handed back to the States to which they belong; but the question was not discussed there, as it was held that the question did not fall within the purview of the Committee. The Indian States Inquiry Committee admitted as regards cantonments that 'there may be cases where the retrocession of such areas in

[1] *House of Lords Debates*, vol. 95, p. 495.

whole or in part is in the interests of the State and the Federal Government'. But they made no recommendation on the subject, as the question of retrocession was considered by them to be one of policy with which they had no concern. As regards civil stations they remarked that 'it would suffice if the area of foreign jurisdiction were confined to the Residency itself and the buildings under the Resident's control'.[1]

The Act proposes to exclude the cantonments and civil stations altogether from the Federation. It provides that before the Instrument of Accession of a State is accepted, His Majesty may notify, with respect to any areas which are now administered by him under the Foreign Jurisdiction Act, his intention to make a declaration to the effect that neither the executive authority of the Federation nor the Legislative powers of the Federal Legislature shall extend to any such area.[2] In explaining this provision, the Secretary of State for India, Lord Zetland, observed: 'It is intended to deal with cases in which full jurisdiction has been exercised by the Crown in self-contained areas within a State, for example, such areas as Quetta, the Civil and Military Station of Bangalore, and cantonments such as Secunderabad and Mhow. It is clear that the jurisdiction hitherto exercised in respect of such areas must continue; in other words, that such areas must be regarded as excluded from the State for the purpose of Federal powers.'[3] The net effect of the provision is to keep out of the Federation any area in respect of which such a declaration is made. It will neither be administered by the Federal Government directly, like a Chief Commissioner's Province in British India, nor by the State of which it forms a part; nor, again, will there be any division of functions between the State and the Federal Government in respect of such an area. It will be adminis-

[1] *Indian States Inquiry Committee Report*, paras. 184 and 185.
[2] *Government of India Act*, sect. 294 (1).
[3] *House of Lords Debates*, vol. 98, no. 81, pp. 604–5.

tered by the Crown as a self-contained 'Imperial enclave', to the total exclusion of both the State and the Federation. The position of the inhabitants of these advanced areas will be very similar to that of the inhabitants of those areas in British India which are considered to be so backward that no kind of Parliamentary institution is deemed to be suitable for them, and which are, therefore, treated as 'excluded areas'. They will have no political rights as at present, and no representation in the Federal Legislature, nor any access to the Federal Court. They will have in effect no place whatsoever in the larger political life of India. Though situated in India, these areas would yet be constitutionally outside Federal India.

It is suggested in some quarters that this anomaly should be removed by amalgamating the tracts, for administrative purposes, with the neighbouring British Provinces. This suggestion is, however, impracticable, for the States would not consent to such an amalgamation, which is only a half-way house to virtual annexation with British India. The only practicable course is to retrocede them to the States to which they belong, and such retrocession becomes necessary as it would be useless under the Federation for the Crown to retain these areas and administer them in isolation from the rest of India. A cession of jurisdiction for cantonment purposes was an expedient adopted in the days when the relation between the States and the British Government was of a political character. The British Government could not apply its own laws to such of the areas in a State as were occupied by British troops without a cession of jurisdiction from the State over the area. But this legal difficulty is bound to disappear with the establishment of the Federation, which creates a constitutional tie between the States and the British Government. The Federal Government is empowered to make laws in respect of all matters relating to 'local self-Government in cantonment areas and the regula-

tion of house accommodation in such areas',[1] and such laws will apply *proprio vigore* to the States in the same way as they apply to the Provinces. The object for which a cession of jurisdiction was obtained in the past from the States will thus be realized by their entry into the Federation. The Federal Constitution will secure to the Central Government, in respect of the cantonments in the State, the same measure of control which it is considered essential that it should exercise in the cantonments in the Provinces. The administration of the cantonments in the States under the extra-territorial powers of the Crown is thus rendered wholly unnecessary, as the purpose for which they were so administered in the past can be achieved otherwise under the Federation. The States should, therefore, insist on their being placed in exactly the same position as the Provinces in respect of their cantonments, that is to say, while in matters relating to local self-government and house accommodation the Federal Government should exercise its authority in all matters outside the federal domain, the cantonments should remain under the administration of the States in the same way as the cantonments in the Provinces remain under the control of the Provincial Governments. The States should get this question settled before they join the Federation, and unless they do so the position will be embarrassing in the extreme in future. The suggestion, which has been made in all seriousness, that these areas should be amalgamated with the Provinces, shows that there is a grave danger of the States being deprived of this part of their territories altogether, if they allow matters to remain where they are.

[1] *Government of India Act*, Schedule 7, List 1, Entry no. 2.

CHAPTER X

THE FEDERAL COURT

In a constitution created by the federation of a number of separate political units and providing for the distribution of powers between a central legislature and executive, on the one hand, and the legislatures and the executives of the federal units, on the other, a federal court is a necessary element. Conflicts of jurisdiction are inevitable in such a constitution, and there must be some authority, independent of both the central government and the governments of the units, capable of determining them when they arise. This function is assigned to the federal court, which, by interpreting the constitution in cases of conflict, delimits the respective spheres of authority of the central government and the units, and prevents them from encroaching upon one another.

The need for such a court in the Indian Federation cannot be over-emphasized. In the first place, conflicts of authority and jurisdiction may fairly be expected to be more numerous than in other federations, as the number of units which make up the Indian Federation is quite unprecedented and may run to five hundred and more. Secondly, the relations of the Central Government with the States are not governed by a single document, as is the case in the United States of America or the Commonwealth of Australia, but are to be gathered from numerous sources including the Act, the Orders in Council made thereunder, and from as many Instruments of Accession as there are State-members in the Federation. Thirdly, the powers transferred to the Central

Government by these Instruments are neither uniform nor similar. Here again the Indian Federation differs from other federations. Each State may make its own terms and conditions in respect of the federal subjects, and these conditions may differ widely from State to State. If any question arises as to whether a particular power is exercisable by the Central Government in a State, the Instrument of Accession of the State will have to be interpreted authoritatively by the Federal Court to find out if the power in question has been transferred by the State to the Central Government. On this interpretation will rest the smooth and satisfactory working of the Constitution and the maintenance of its federal character.

The need for some sort of judicial machinery for the settlement of disputes between the States and the Government of India and between the States and the Provinces has long been felt by the States. There often arise disputes of a justiciable character, and sometimes complicated questions involving the interpretation of treaties and agreements, which cannot be settled through the ordinary channel of official correspondence through the Residency, but are only suitable for decision by a judicial tribunal. Such questions are now decided by the Government of India, though it is itself a party to the dispute. No opportunity is given to the State concerned to adduce evidence on the questions at issue or to advance arguments in support of its case. There exists, in fact, no satisfactory method of obtaining an exhaustive and judicial inquiry regarding the issues, such as might satisfy the States (particularly in cases where the Government of India is itself interested) that they have been considered by an independent and impartial tribunal. By putting its own interpretation on the treaties and agreements, the Government of India has gradually enlarged its sphere of authority at the expense of the States. The absence of a judicial tribunal for adjudicating upon disputes between the

States and the Government of India may be said to be one of the main causes which tended to bring about a reduction of State status in so far as their treaty position is concerned.

The authors of the Montagu–Chelmsford Report recommended that in such disputes, whenever the Viceroy felt that a judicial inquiry was desirable, he should appoint a commission, on which both parties would be represented, to inquire into the matter in dispute and report its conclusions to him.'[1] In pursuance of this recommendation, the Government of India has passed a Resolution for dealing with cases of this nature. According to this Resolution, whenever a dispute arose between the Government of India or any Local Government and any State, or between two or more States, or where any State was dissatisfied with the ruling or advice of the Government of India or of its local representative, and when it appeared that for the proper determination of the case independent advice was desirable, the Governor-General would, at his discretion, appoint a Court of Arbitration to inquire into the case. The composition of the Court would be determined in each case by the Governor-General, and would ordinarily include a judge of a Chartered High Court in British India and one nominee of each of the parties. On the appointment of the Court, the Governor-General would convey to it an order of reference, stating therein the matter referred for inquiry. The Court, after hearing the parties, would make its recommendations to the Governor-General in a judgement, and the Governor-General, after considering the recommendations, would give his decision in the matter. Either party, if dissatisfied with the decision, might appeal to the Secretary of State for India.[2]

The Resolution, however, had no force in law but merely laid down the policy which the Government of India intended to pursue in its disputes with the States. The appointment

[1] *Montagu–Chelmsford Report*, para. 303.

[2] Resolution of the Government of India, Foreign and Political Department, No. 427R, dated 29 October 1920.

of a Court of Arbitration was at the discretion of the Governor-General, who was under no obligation to appoint one in every case. The questions at issue were not framed by the Court but by the Governor-General, and the judgement of the Court, again, was not binding on him. The final decision of the case rested with the Governor-General, who was under no obligation to give his decision in accordance with the judgement of the Court, but was at liberty to vary or modify it. The present position was well summed up in the dictum of Lord Reading—in his famous letter in reply to the Nizam's demand for the appointment of a Court of Arbitration to go into the question of Berar. He said that 'it is the right and prerogative of the Paramount Power to decide all disputes that arise between the States or between one of the States and itself, and even though a Court of Arbitration may be appointed in certain cases, its function is merely to offer independent advice to the Government of India, with whom the decision rests' and that 'there is no provision for the appointment of a Court of Arbitration in any case which has been decided by His Majesty's Government.'

If the Federal Court had been constituted with the same powers and jurisdiction as those of the corresponding Courts in other federations, viz. the Supreme Court of the United States and the High Court of Australia, it would have supplied a long-felt want and definitely improved the position of the States. A fairly large class of cases, other than those relating to Paramountcy, which are now decided by the Government of India, would have fallen within the jurisdiction of the Court. In deciding these cases the Court would have followed a settled legal procedure and the present executive decrees would have been displaced by judicial decisions binding on both parties. The States, however, are not willing to allow the Court to exercise its jurisdiction in all their disputes on the sentimental ground that the exercise of such jurisdiction by the Court would be derogatory to

their sovereign rights. But the jurisdiction of the Court in relation to a State in such cases would not have been imposed on it *ab extra*, but it would have arisen from the consent of the ruler himself, who, of his own free will, would have invested the Court with the authority to exercise its jurisdiction in disputes to which his State had been a party. By virtue of this grant, the Court would have exercised its powers, and in having its disputes settled by it, a State would not have submitted itself to an external authority but to an organ of the Federation to which it had delegated jurisdiction over itself. The psychology of the Princes is somewhat difficult to understand. So long as they were subjected to the executive decrees of the Government of India, they were clamouring for a judicial tribunal for the determination of their disputes, but now that a Court is established they say that a judicial settlement of their disputes would derogate from their sovereignty. They are very reluctant to concede even the bare minimum of powers necessary to enable the Court to function properly. This reluctance has resulted in crippling the powers of the Court and in so curtailing its sphere of utility as to make it of little practical value. The Indian Federal Court, as now constituted, will not exercise even a tittle of the powers exercised by the Supreme Court of the United States and the High Court of Australia.

The Federal Court is created by the Act, its jurisdiction also being defined by it, and it cannot be abolished by any means short of an amendment of the Act itself. The Court consists of a Chief Justice and such number of puisne judges, not exceeding six, as His Majesty may deem necessary. This number may be increased by the presentation of an address by the Federal Legislature to the Governor-General for submission to His Majesty. The Court is now composed of a Chief Justice, Sir Maurice Gwyer, and two other judges, Sir S. Sulaiman and Mr. Jayakar, who have taken a prominent part in the Round Table Conferences. Persons who have

been in practice for at least ten years as pleaders in the High Court of a State, or who have served as judges in such a Court for not less than five years, are qualified for appointment as judges of the Federal Court, along with pleaders and judges of similar standing in the Provinces. A judge is appointed, not by the Governor-General on the advice of the Federal ministers, as in Australia or Canada, but by His Majesty on the advice of the Secretary of State for India and his ministers in the United Kingdom. He holds office, if he does not resign earlier, until he is sixty-five years of age.[1] The salary of the Chief Justice is fixed by the Federal Court Order in Council at Rs.7,000 a month, and those of the other two judges at Rs.5,500. The salary of a judge cannot be varied to his disadvantage after his appointment, and is not liable to be submitted to the annual vote of the Federal Legislature.

The statutory provisions which, in England, secure the independence of the judges have formed the basis of similar provisions throughout the British Empire. Judges hold their office 'during good behaviour', and are liable to be removed for misbehaviour or on an address by the houses of legislature. Where the power of removal is vested in His Majesty, it is exercised upon the advice of the Secretary of State, and it has been established that 'in dismissing a judge in compliance with addresses from a local legislature and in conformity with that law, the Crown is not performing a mere ministerial act but adopting a grave responsibility which it cannot be advised to incur without satisfactory evidence that the dismissal is proper;[2] and that the Crown may, as in the case of Judge Boothby of South Australia, seek the advice of the Judicial Committee before arriving at a decision. It is this procedure of reference to the Judicial Committee that the Joint Parliamentary Committee recom-

[1] *Government of India Act*, sect. 200.
[2] Todd, *Parliamentary Government in the Colonies*, p. 613.

mended for adoption for terminating the tenure of the judges of the Indian Federal Court. They observed that 'a judge should not be removed for misbehaviour except on a report by the Judicial Committee of the Privy Council to whom His Majesty should be empowered to refer the matter for consideration'.[1] This is given effect to in the Act, and a judge can only be removed by His Majesty on the ground of misbehaviour or infirmity of body or mind, on the advice of the judicial Committee.[2]

The Court is a Court of record, that is to say, it will have the power to punish by fine or imprisonment for contempt of court. It shall sit in Delhi or such other places as the Chief Justice may fix with the approval of the Governor-General. With the approval of the same authority, the Court may frame rules for regulating the practice and procedure before it, the time within which appeals are to be filed, and the summary disposal of appeals which appear to it to be frivolous or vexatious. The Chief Justice shall determine, subject to any rules of court, what judges are to constitute any division of the Court and what judges are to sit for any purpose. The judgements of the Court will be pronounced in open court with the concurrence of a majority of the judges present at the hearing of the case, and a judge who does not concur may deliver a dissenting judgement.[3] The proceedings of the Court shall be in the English language.

The Court will have, according to the Act, both original and appellate jurisdiction, and will also exercise an advisory function. A federal court generally bears a close resemblance in its original jurisdiction to an International Court of Justice. Both are tribunals for the adjudication of disputes arising between States as juristic persons, and a federal court has a compulsive jurisdiction over all controversies between the units, which, before federation, were decided

[1] *Joint Select Committee Report*, para. 323.
[2] *Government of India Act*, sect. 200.
[3] Ibid., sect. 214.

through diplomatic channels, or by an appeal to arms. It is on this basis that the Supreme Court of the United States and the High Court of Australia are constituted, and both of them are empowered to determine all controversies between two or more units, or between the central government and one or more units. The Federal Court of India also, if it had been constituted on the same basis, would have decided all disputes arising between two or more States *inter se*, or between a State and a Province, or between the Central Government and a State. This would really have been a blessing to the States, which have been strangers hitherto to a judicial settlement of their disputes. But, as pointed out earlier, the jurisdiction of the Court has been restricted unnecessarily by the reluctance of the States to invest it with the necessary authority to settle disputes to which they are parties. A differentiation has therefore been made in the powers which the Court can exercise in relation to a Province and those which it can exercise as regards a State. So far as disputes between the Provinces and the Federal Government or between Provinces *inter se* are concerned, the Federal Court can entertain and decide any dispute, whether of law or fact, on which the existence of a legal right depends.[1] But, when a State becomes a party to a dispute, its jurisdiction is not so wide as to include all justiciable disputes, but is limited to such as satisfy one of the three following conditions: Firstly, the dispute must concern the interpretation of the Act, or of an Order in Council made under it, or the legislative or executive powers assigned to the Federal Government by the Instrument of Accession of that State. Or, secondly, it must arise under an agreement made between the ruler of a State and the Governor-General, for the administration of federal laws in that State, or must relate to some matter with respect to which the Federal Legislature has power to make laws for that State. Or,

[1] *Government of India Act*, sect. 204.

lastly, it must arise under an agreement between that State and the Federal Government or a Province, expressly providing that the jurisdiction shall extend to such a dispute. Further, the agreement must have been made after the establishment of the Federation and with the approval of the Crown Representative.[1]

These conditions limit the jurisdiction of the Court to cases arising under the Act, the Orders in Council and the Instruments of Accession. As all these documents govern the relations of the States and the Central Government, the jurisdiction of the Court extends only to constitutional issues likely to arise in future between the States and the Central Government regarding their relative spheres of authority. The Court will have no jurisdiction in cases which do not call for an interpretation of these documents. A large field in which disputes are of common occurrence is thus kept out of the jurisdiction of the Court.

For example, the Court cannot entertain and decide disputes between a Province and a State or between States *inter se*, however justiciable such disputes may be, as they do not involve an interpretation of the Act, or the Orders in Council, or the Instruments of Accession. The most important class of cases which have called for the exercise of the authority vested in the Supreme Court of the United States to adjudicate between units have been those relating to disputed boundaries and the division of waters. The Federal Court of India will have nothing to do with this class of cases and it is prohibited from entertaining any action relating to the division of waters.[2]

In a large agricultural country like India, where there are several large rivers flowing through two or more States and Provinces, disputes with regard to the division of water between the several jurisdictions occur frequently and assume great importance, engendering a considerable amount

[1] *Government of India Act*, sect. 204. [2] Ibid., sect. 133.

of feeling among the people. The Government of India, as the representative of the Paramount Power, acts as the final arbiter in such disputes and decides them on the principle that the water should be distributed in the best interests of the public at large, irrespective of Provincial and State boundaries. Thus when the Sirhind Canal was constructed, water was allotted to several non-riparian States like Patiala, Jind, Nabha, and Faridkot where, it was thought, it could be beneficially utilized, though these States had absolutely no claim to it and there were large tracts of British territory to which it might have been assigned. Similarly in the case of the Sutlej Valley Project, Bikaner was allowed to participate in the benefits of the scheme though it was a non-riparian State. This was objected to by Bahawalpur, one of the partners in the project, on the ground that there was additional land in Bahawalpur itself sufficient to absorb all the available water after meeting British requirements. But this objection was overruled by the Government of India which considered that the land in Bikaner was more suitable for irrigation than the additional land which Bahawalpur desired to bring under cultivation.

Even where a definite agreement exists between a Province and a State for referring riparian disputes to an Arbitration Tribunal, the position is by no means free from difficulty. The party dissatisfied with the award of the Tribunal invokes the intervention of the Paramount Power on some ground or other to set aside the award, as was done by Madras in the prolonged controversy which took place between that Province and Mysore with regard to the division of the water of the river Cauvery. Under an Agreement concluded between Madras and Mysore in 1892, the State was prohibited from undertaking any new irrigation reservoirs without the consent of Madras which was also under an obligation not to refuse such consent 'except for the protection of prescriptive rights already acquired and actually existing'. Disputes

arising under the Agreement were to be referred to the final decision either of arbitrators appointed by both parties or of the Government of India. In 1910 the State proposed to build the present Krishnaraj Sagar dam over the Cauvery, and on Madras refusing to give its consent to the project, the matter was referred to arbitration as provided in the Agreement. The Tribunal gave its award in favour of Mysore and this was also confirmed by the Government of India. But Madras preferred an appeal against the award to the Secretary of State for India on the ground that the Tribunal was not constituted in the precise manner which the Agreement laid down. Eventually the dispute was resolved by mutual agreement by the parties themselves.

There has now arisen the question of the water of the river Tungabhadra which seems to surpass in importance even the prolonged Cauvery dispute. The river Tungabhadra derives its name from two tributaries Tunga and Bhadra, both of which take their birth in the Mysore State, and after being richly fed in the rainy *malnad* districts of that State, unite together in Mysore territory. It then passes through British India, forming the boundary between the Provinces of Madras and Bombay, and finally discharges into the river Krishna in Hyderabad. Mysore proposes to construct a reservoir over the tributary Bhadra, while Madras and Hyderabad have in view a joint project for a reservoir over the main river. The question of the distribution of the water of the Tungabhadra has thus become a matter of great importance to three Governments and it remains to be seen what procedure and principle the Government of India is going to adopt to settle it. As between Mysore and the neighbouring Province of Madras the problem presents little difficulty. The parties are bound by the Agreement of 1892 and points of disagreement arising between them should be referred to arbitration as provided in it. It is, however, reported that it is proposed to refer the matter to a general

arbitration among all the three parties. This will result in inflicting a grave injustice on Mysore and will enable Madras to evade its obligations under an Agreement, the benefits of which it has enjoyed for nearly half a century.

The States are generally dissatisfied with the procedure and the principle followed by the Government of India in riparian disputes. They feel that the principle of distributing the water 'in the best interests of the public at large irrespective of Provincial and State boundaries' results sometimes in depriving riparian States of a portion of the share of water to which they are legitimately entitled. They urge therefore that it would be more equitable to proceed on the principle that each riparian State is entitled to the quantity of water, from its own surface, which it can reasonably harness or utilize within its territory. Similarly the States feel that such disputes should be referred to an impartial tribunal, as, in cases where British India is concerned, the Government of India is itself a party to the dispute.

These grievances of the States would have been removed if the jurisdiction of the Federal Court had been widened so as to include riparian disputes between the units, leaving the Court free to evolve rules for regulating the nature and extent of the riparian rights of the units. The Act, however, prohibits the Court from entertaining such disputes and prescribes a special procedure for their determination. According to this procedure, when any complaint is made by any Province or State with regard to interference with water supplies by another State or Province, the Governor-General shall, if he considers that the issues raised are of sufficient importance, appoint a Commission consisting of persons having special knowledge of engineering, irrigation, finance or law, to investigate the matter in accordance with such instructions as he may give them and to make a report to him. After receiving and considering the report of the Commission, the Governor-General shall give such decision

and shall make such order, if any, in the matter as he may deem proper. Before the Governor-General gives his decision, if the Province or State requests him so to do, he shall refer the matter to His Majesty in Council, who may give such decision in the matter as he deems proper.[1] The acceptance of this procedure is not obligatory on the States. They are at liberty either to accept it or not under their Instruments of Accession.[2] In the case of States which do not accept the procedure, their riparian disputes will be decided as at present by the Paramount Power.

The second class of cases which, by the provisions of the Act, are excluded from the purview of the Federal Court are those arising under agreements concluded before the establishment of the Federation; for example, agreements relating to relief from double taxation concluded in the past between the Government of India and the States. This class of disputes will also be decided as at present by the Paramount Power. If they are to be brought within the jurisdiction of the Court, they must satisfy the third condition, viz. a fresh agreement must be concluded, with the approval of the Crown Representative, expressly providing that the jurisdiction of the Court shall extend to such cases.

Some of the progressive States were not in favour of so curtailing the jurisdiction of the Court. On their behalf Sir Mirza Ismail urged that the jurisdiction of the Court should be as extensive in relation to the States as in regard to the Provinces. In a statement which he made on their behalf, in the Federal Structure Committee, he observed: 'some of us feel that with the consent of the State or States concerned it may be made possible for the Court to adjudicate on disputes of a justiciable nature between States and British India, or between a State and a State, even in non-federal matters, such as boundary disputes and rights of irrigation, etc.'. Sir Manubhai Mehta, then Dewan of Bikaner, had

[1] *Government of India Act*, sect. 131. [2] Ibid., sect. 134.

similarly advocated in some of his writings more extensive powers being granted to the Court. But this proposal did not find acceptance with the Committee, who thought that if such powers were conferred on the Court, its jurisdiction 'would extend beyond the limits of the treaties of cession which the States will have made with the Crown before entering the Federation'. They therefore recommended that the Court should have seisin of disputes arising within the federal sphere only.[1] This objection, however, was merely a technical one which could easily have been surmounted by providing for the necessary transfer of powers under the Instrument of Accession so as to bring all justiciable disputes within the purview of the Court. But the real difficulty in the way was the reluctance of the smaller States to have their disputes decided by the Federal Court, as they thought that such a procedure was derogatory to what they believed to be their sovereignty.

The original jurisdiction of the Federal Court is compulsory, that is to say, it does not depend upon the consent of the State for its exercise. A State is not suable in a court of law, unless it voluntarily elects to submit itself to the jurisdiction of the court. But it is presumed to have waived this privilege when it enters a federal union. This is the reasoning adopted by the Supreme Court of the United States of America. In a case in which the State of Massachusetts objected to the jurisdiction of the Supreme Court, on the ground that the exercise of such jurisdiction by the Court was inconsistent with its sovereignty, the Court over-ruled the objection and held that the State was amenable to its jurisdiction. Justice Baldwin, delivering the judgement of the Court, observed: 'The States in their highest sovereign capacity, in a plenitude unimpaired by any act and uncontrollable by any authority, adopted the Constitution by which they respectively made to the United States a grant

[1] *Third Report of the Federal Structure Committee*, para. 54.

of judicial power over controversies between two or more States. By the Constitution, it was ordained that this judicial power, in cases where a State was a party, should be exercised by this Court as one of original distinction. The States waived their exemption from judicial power as sovereign by original and inherent right, by their own grant of its exercise over themselves in such cases, but which they would not grant to any inferior tribunal. By this grant this Court has acquired jurisdiction over the parties in this cause by their own consent and delegated authority, as their agent, for executing the judicial power of the United States in the cases specified.'[1]

These principles have been accepted and applied by the High Court of Australia. The State of New South Wales, when sued for an alleged trespass, raised the contention that it was a sovereign State and, as such, not subject to the jurisdiction of the High Court. But this contention was overruled by the Court, which held that both the Commonwealth Government and the States were subject to the jurisdiction of the Court, and that an action might be brought against a State without its consent.[2] The same principles may equally be said to be applicable to the State-members of the Federation of India, and they may be held to have waived their original privilege on their entry into the Federation, and submitted themselves to the jurisdiction of the Court in all matters in which an original jurisdiction is vested in it.

The appellate jurisdiction of the Court is much more restricted than the original and is exercisable in cases of private litigation arising within the federal sphere. In the United States of America the separation between the Central Government and the units is so complete that the Central Government does not rely upon State agencies for carrying out the functions entrusted to it by the Constitution. It

[1] *State of Rhode Island* v. *State of Massachusetts*, 12 Pet. 657.
[2] *The Commonwealth* v. *The State of New South Wales*, 32 C.L.R. 200.

maintains, for the enforcement of federal laws, its own courts of first instance, known as Federal District Courts, which operate within and sit in the territories of the units. Disputes arising between private persons under federal laws are instituted, in the first instance, in these courts and an appeal lies from their decisions to the Supreme Court. The system prevailing in Australia is quite different. The Commonwealth Government does not maintain its own courts for exercising federal jurisdiction, but the courts of the units are invested with such jurisdiction either by the Constitution Act or by federal laws, such as the Australian Judiciary Act.

The system prevailing in Australia is followed in the Federation of India. No federal courts of first instance will be established by the Central Government, but the existing courts in the States and the Provinces will themselves exercise federal jurisdiction in private litigation. Actions against private persons will be brought, in the first instance, in these courts, and an appeal will lie from their decisions to the Federal Court under certain circumstances. Some distinction, however, will have to be made between States like Hyderabad, Mysore, Travancore, Baroda and others which possess efficient High Courts and those in which they do not exist. The Act gives power to His Majesty to declare any court, after communication with the ruler of the State, to be a High Court for the purposes of the exercise of federal jurisdiction.[1] Many of the States, situated mostly in Kathiawar, Central India, and Bihar and Orissa, have no courts of their own and there is not even an approach to a High Court. The ruler himself acts as the highest judicial tribunal of the State, or this function is exercised on his behalf by the Political Officer. It would be impossible to entrust these States with the exercise of federal jurisdiction; they possess neither the judicial talent nor the experience for undertaking such responsible work as the interpretation of

[1] *Government of India Act*, sect. 217.

the Act and the Instrument of Accession, which the exercise of federal jurisdiction clearly involves. Some arrangement will have to be made in their case, and the best that can be devised is to group them on a regional basis and establish a common court for each group, and recognize it as a High Court. Some of the smaller States seem to have made a move in this direction and the Southern Mahratta States are reported to be contemplating the creation of a common court.

In exercising federal jurisdiction the High Courts of the States and the Provinces may have to decide two classes of cases. Firstly, the decision of a case may depend upon whether or not a particular statute is *ultra vires* of the Federal Legislature. In the course of a private litigation one party may challenge the validity of a federal statute. Similarly, the validity of a State law may be questioned on the ground that it has no power to enact that law. In such cases the Court will have to interpret the Act and the Instrument of Accession to find out if either the Federal Legislature or the State possesses the power to enact the statute. In this class of cases, which raise constitutional issues involving the interpretation of the Act and the Instrument of Accession, an appeal is permitted from the decision of the High Courts of the States to the Federal Court. The second class of cases, which are by far the more numerous, relate to the interpretation of a federal enactment, for example, either Company law or the law of Negotiable Instruments. No appeal lies to the Federal Court in this class of cases and the interpretation given by the State High Court is final.

The Act thus leaves the interpretation of federal laws to the High Courts of the States and the Provinces, with the result that a bewildering variety of interpretations is made possible. The Secretary of State (Sir Samuel Hoare) realized the inconveniences arising from such a situation, and in a

Memorandum submitted by him to the Joint Parliamentary Committee he suggested that the Committee should consider the propriety of extending the appellate jurisdiction of the Federal Court so as to include cases involving the interpretation of federal laws.[1] Sir Akbar Hydari suggested that even without a regular appeal to the Federal Court, the same object may equally well be secured by a provision that any point of interpretation of a federal law arising in the course of a case before a State High Court should be taken up for decision to the Federal Court and the case thereafter remitted to the State High Court for judgement on merits.[2] The Joint Select Committee thought that the appellate jurisdiction of the Court ought to be extended to include the interpretation of federal laws. They observed: 'it is essential that there should be some authoritative tribunal in India which can secure a uniform interpretation of federal laws throughout the whole of the Federation.'[3]

The Act has not carried out this recommendation but leaves each High Court free to interpret the federal laws in its own way. It, however, tries to bring about some sort of uniformity by providing that the law declared by the Federal Court and by any judgement of the Privy Council as regards any matter with respect to which the Federal Legislature has power to make laws, shall be followed by all Courts in British India and the States.[4] But the provision gives expression to a pious hope. For some time to come, at any rate, the State Courts will have no federal decisions to follow, as the Federal Court will not be in a position to make any pronouncement in respect of a federal law. No case involving the interpretation of such a law will come before it either in its original or appellate jurisdiction. The

[1] *Minutes of Evidence taken before the Joint Select Committee on Indian Constitutional Reform*, p. 1747.
[2] Ibid., Question 14313.
[3] *Report of the Joint Select Committee*, para. 325.
[4] *Government of India Act*, sect. 212.

Act gives power to the Federal Legislature to enlarge the jurisdiction of the Court so as to make it a Court of Civil Appeals for British India.[1] If this power is exercised by the Federal Legislature, appeals will lie to the Federal Court in such cases, and it will have an opportunity of interpreting federal laws. The States' courts are then bound to follow its decisions and apply them to cases coming before them. But if a State court disregards this constitutional obligation and fails to apply the federal decision to a case before it and prefers to give its own ruling, there exists no means of getting it corrected by taking up the matter on appeal to the Federal Court. The decision of the State court, though it may be in clear contradiction to the ruling of the Federal Court, would still be final.

In the limited class of appealable cases, an appeal cannot be taken directly to the Federal Court from a decision of the High Court of a State both on fact and on law. A person who desires to appeal has to approach the High Court of the State, in the first instance, and ask it to state a special case for the decision of the Federal Court. The State court has full liberty either to accede to the request or to refuse it, as seems best to it. But if it refuses, the applicant can apply to the Federal Court for leave to appeal, and if the application is granted, the Federal Court will call upon the State Court to state a special case for its consideration and if the facts are insufficient, it may return the case for a further statement of facts. If the appeal is allowed, the Federal Court will remit the case to the State court with a declaration that its judgement should be substituted for the judgement appealed against, and the State court shall give effect to the decision of the Federal Court.[2]

The third kind of jurisdiction conferred on the Federal Court is what is known as the advisory jurisdiction. The

[1] *Government of India Act*, sect. 206.
[2] Ibid., sects. 207 (2) and 209 (1).

Executive may at times be embarrassed by uncertainties and may desire to know whether it may pursue a particular course of conduct. Very early in the history of the United States, the judges of the Supreme Court had to decide upon their attitude towards questions of law addressed to them by the Executive. In 1793, Washington sought the opinion of the judges of the Supreme Court as to various questions arising under treaties with France, but after some delay, the judges, 'considering themselves merely as a legal tribunal for the decision of controversies brought before them in a legal form, deemed it improper to enter the field of politics by declaring their opinion on questions not growing out of the case before them'.[1] In several States of the Union the constitutions have provided that the judges shall give their opinion when called upon by the Executive or the Legislature. Such opinions are never regarded by the judges themselves as authoritative, and may be departed from by the Courts even when constituted by the same judges who have given the opinion. In Canada, by the Supreme Court Act of 1875, extended by 54: 55 Vic. C. 25, the Governor-General in Council may refer to the Supreme Court various specified matters, including questions touching provincial legislation, and the constitutionality of any legislation of the Parliament of Canada, and generally any other matter with reference to which the Executive sees fit to exercise this power. It is the duty of the Court to hear and consider the matter referred to it; parties interested, whether provincial governments, associations or individuals, are cited, and are represented by counsel; and the finding of the court is practically a declaratory judgement, on which an appeal may be taken to the Privy Council. This power has been freely exercised, and many of the important constitutional questions which have come from Canada to the Privy Council have been submitted under it.[2] The inconvenience of determining

[1] Sir Harrison Moore, *Commonwealth of Australia*, p. 367. [2] Ibid.

abstract questions of law has been adverted to often by the Privy Council. In a case in which the Governor-General of Canada asked certain questions of the court, which it found extremely difficult to answer, Lord Haldane, delivering the judgement of the Court, observed: 'Under this procedure questions may be put of a kind which it is impossible to answer satisfactorily. Not only may the position of future litigants be prejudiced by the Court laying down principles in an abstract form without reference or relation to actual facts, but it may turn out to be impossible to define the principle adequately and safely without previous ascertainment of the exact facts to which it is to be applied. It has therefore happened that in cases of the present class, their Lordships have occasionally found themselves unable to answer all the questions put to them, and have found it advisable to limit and guard their replies.'[1] Nevertheless, this procedure of obtaining the advisory opinion of the judges has become well settled, and, in England, under section 4 of the Judicial Committee Act of 1833, His Majesty in Council may refer to the Privy Council for opinion any question of public importance.

On the analogy of these provisions and having regard to the important functions which the Governor-General of the Indian Federation will have to perform, it has been considered that it would be better that he should be able to consult the judges of the Federal Court and obtain their opinion on important questions than that he should depend upon the advice of his secretaries and the Federal Advocate-General. The Act, accordingly, provides that if the Governor-General considers that a question of law has arisen, which is of such a nature and of such public importance that it is expedient to obtain the opinion of the Federal Court upon it, he may in his discretion refer the question to the Court

[1] *Attorney-General of British Columbia* v. *Attorney-General of Canada*, 1914, A.C. 162.

for consideration. The proceedings will be open to the public and the Court may, after giving such hearing as it thinks fit, give its opinion in open court.[1]

The Federal Court is not India's final judicial authority. Its judgements are liable to be revoked and set aside by the Privy Council, to which an appeal will lie from its decisions. The traditional doctrine that an appeal lay to the Privy Council from the decision of any Colonial Court was for the first time given up in 1900, when the Imperial Government accepted the demands of the framers of the Australian Constitution that the interpretation and the decision of all disputes on constitutional issues arising from the establishment of the Federal Commonwealth should rest, not with the Judicial Committee of the Privy Council, as in the case of Canada, but with the High Court of the Commonwealth. The small extent to which appeals to the Privy Council from the courts of the Australian States remained open was removed in 1907; and in this manner, with the full assent of the British Government, the Australian High Court has been made the final arbiter of the interpretation of the Commonwealth Constitution. In the Indian Federation, however, the appeal to the Privy Council is preserved. It is provided that an appeal may be brought to His Majesty in Council from a decision of the Federal Court, given in the exercise of its original jurisdiction, involving the interpretation of the Constitution, and in any other case, by leave of the Federal Court or of His Majesty in Council.[2]

A constitutional tie is thus created for the first time between the States and the Privy Council. Hitherto the Privy Council had no jurisdiction over the States and could entertain no appeals from their courts. Questions affecting the ruler of a State and his subjects could not be taken to it directly in the form of appeals, and the only way in which such questions could be brought before it was, as the Privy

[1] *Government of India Act*, sect. 213. [2] Ibid., sect. 208.

Council pointed out in the Nawab of Surat's[1] case, for the Crown in the exercise of its reference power to state the point for its opinion. The opinion given by it in such cases was by no means a judgement binding on the State concerned, but only an advice given to the Crown. In the earlier stages of the discussions at the Round Table Conferences the States were rather reluctant to concede an appellate jurisdiction to the Privy Council in disputes to which they were parties. Such an appeal was considered by them to imply the subordination of the State-members of the Federation to a tribunal deriving its authority exclusively from the Crown. The Joint Parliamentary Committee, however, pointed out that it was incorrect to regard the Privy Council as an external authority and that its jurisdiction would be based upon the voluntary act of the rulers themselves, i.e. their Instruments of Accession.[2] The Act accordingly subjects the States to the jurisdiction of the Privy Council which is the final appellate authority in all cases involving constitutional issues. If a State or the Central Government is dissatisfied with any decision of the Federal Court, given in the exercise of its original jurisdiction, with regard to the relative spheres of authority of a State and the Central Government, it can take the matter on appeal to the Privy Council. Similarly the subject of a State may appeal to the same tribunal by leave of the Federal Court, or of the Privy Council itself, in disputes which raise a constitutional issue.[3]

One more point connected with the Federal Court is that of the enforcement of its judgements. In exercising its original jurisdiction in disputes between the Central Government and the States, the Court can give no redress other than a declaratory judgement. It is not empowered to issue the prerogative writs of mandamus, injunction or prohibition. If a State finds that the Central Government is exceeding its

[1] V. Moore's *Indian Appeals*, p. 499.
[2] *Joint Parliamentary Committee Report*, para. 326.
[3] *Government of India Act*, sect. 208.

powers and is pursuing a course of conduct which is clearly *ultra vires*, it cannot get an interim injunction. It is assumed that when a judgement is delivered by the Court, the parties to the dispute will implicitly abide by it and give effect to it. But if either the Central Government, or the State, refuses to carry out the judgement, there exists no constitutional procedure for enforcing it. But this defect is not peculiar to the Indian Constitution but is inherent in all federal constitutions. In the United States there have occurred several cases where the States have refused to abide by the decisions of the Supreme Court. In the celebrated case of *Chisholm* v. *Georgia*, decided in 1798, the Supreme Court gave a decree in favour of one Mr. Chisholm for the recovery of a debt against the State of Georgia. But the State protested against the decision on the ground that it was an affront to its sovereignty, and practically rose in arms against the Court. The judgement of the Court was not executed. It was this attitude of the State which led to the eleventh amendment of the Constitution, which took away the federal jurisdiction given to the Supreme Court in disputes between a State and a citizen of another State. Another well-known case is that of *Virginia* v. *West Virginia*. After the Civil War there was a partition of the old State of Virginia into two states, viz. Virginia and West Virginia, in 1861, and as a term of that partition the new State undertook to pay a proportion of the public debt incurred by the parent State before the partition. For more than forty years the debt remained unpaid and Virginia was forced to invoke the aid of the Supreme Court in 1906. West Virginia proved most obstructive, but in 1915, after all methods of obstruction failed, the Court pronounced a judgement in favour of Virginia. But this judgement remained unhonoured and it was not till four years later that West Virginia was persuaded to give effect to the judgement. Similarly, in one case where the Court gave a judgement for the extradition of a criminal

from a State, the Governor of the State concerned refused to surrender the criminal and the Court was powerless to enforce its judgement. An instance in which a State has sought to prevent the enforcement of an order of the Supreme Court is that of the State of Pennsylvania with regard to the decree in the case of *United States* v. *Peters*.[1] In that case, service of attachment having been resisted by the State militia which had been called out by the Governor of the State under authority of the legislature of the State, the Federal Marshal appointed a day for the service of the writ and summoned a *posse comitatus* of two thousand men to assist him. The Governor then appealed to the President of the United States, who refused to intervene, whereupon the State ceased to resist the enforcement of the decree and its legislature appropriated the money for its satisfaction.[1]

In Australia only recently the attitude of Mr. Lang, the Premier of New South Wales, towards the decision of the High Court as to the validity of the Financial Agreements Act passed by the Commonwealth Parliament, assumed the definite form of deliberate defiance. He attacked the impartiality of the High Court and made successive efforts to defeat the methods adopted by the Commonwealth Government to enforce performance of the duties of the State. The Governor of the State intervened and removed Mr. Lang from office. But if the legislature and the people had supported Mr. Lang in his actions and made it difficult for the Governor to constitute an alternative ministry, an impossible situation would have been created.

A federal constitution has its limitations like any other constitution. Much has to be left to the federal loyalty of the units and reliance has to be placed on the good sense of the community to bring pressure on the units to fulfil their obligations. But if any unit fails to fulfil its obligations, they cannot be enforced by the central government by any

[1] Willoughby, *Constitutional Law of the United States*, vol. iii, p. 1436.

constitutional procedure, but only by the declaration of war against the recalcitrant unit. In the Indian Constitution, however, the danger of the States disobeying the orders of the Federal Court is less than in other federations. For the Governor-General in his capacity as the Crown Representative will always be able to use his 'good offices' to induce the States to obey the decisions of the Court. But if in a particular case he sympathizes with the State against which a decision is given, and refuses to use his influence, the judgement of the Court will remain a dead letter.

As regards the judgements given by the Court in private litigation, in the exercise of its appellate jurisdiction, the Court possesses no machinery of its own to execute them. In America the orders of the Supreme Court are executed by the subordinate Federal District Courts, each of which has attached to it an officer called the United States Marshal, whose duty it is to carry out such orders by arresting prisoners, levying execution, putting persons in possession and so forth. He is entitled, if resisted, to call on all good citizens for help; if they cannot or will not render it, he may refer to Washington and obtain the aid of federal troops. These officials constitute a network of federal authorities covering the whole territory of the Union and independent of the officers of the State Courts.[1] The judgement and orders of the Federal Court of India will not be executed by federal authorities as in the United States, but will be made effective by the High Courts of the Provinces and the States, in the same way as the judgements of the High Court of the Commonwealth of Australia are executed by the Supreme Courts of the States.

There is, however, a fundamental difference between the Commonwealth High Court and the Federal Court in their relations to the State Courts. The former may direct the issue of writs commanding the performance of its duty by

[1] Bryce, *American Commonwealth*, vol. i, p. 238.

any State court invested with federal jurisdiction. If there is any delay in the execution of its judgements it may directly order an officer of the State court to obey its judgement. This was the ruling given in the case of *Bayne* v. *Blake*. In that case the Commonwealth High Court had reversed the judgement of the Supreme Court of Victoria, and remitted the cause to the Supreme Court for execution. The Supreme Court however, on information that an appeal was pending before the Privy Council, adjourned the matter until the result of the Privy Council appeal should be known. From this order an appeal was taken to the High Court. It was contended that the Supreme Court was not a servant of the High Court, and that when a cause was remitted to the Supreme Court, it was remitted to it subject to the powers exercisable by it over its own proceedings, including the power to hear cases at such times as its rules and convenience should dictate. This contention was over-ruled by the High Court which held that the Supreme Court had no power to make any order preventing the execution of a judgement of the High Court, and that an order for an adjournment of proceedings was in the circumstances an order thwarting or obstructing the execution of the judgement and was, therefore, wrong and must be set aside.[1]

The Federal Court of India possesses no such powers of direct control and supervision over the State High Courts. Its judgements will not be executed in the ordinary manner in which the judgements of an appellate court are executed by courts subordinate to it. It will have to follow the extraordinary procedure of sending out letters of request to the rulers of the States asking for the execution of its orders, thus treating the State courts, which are really subordinate to it, as though they were foreign courts and belonged to a wholly different sovereignty. The Act lays down that where the Federal Court remits a case for execution to a State court

[1] Sir Harrison Moore, *Commonwealth of Australia*, pp. 241–2.

or requires the aid of the civil or judicial authorities of a State, the court shall cause letters of request to be sent to the ruler of the State, and the ruler shall cause such communication to be made to the State courts or to any civil or judicial authority as the circumstances may require.[1] The enforcement of all the orders of the Court is thus placed at the mercy of the State courts. They must be enforced, if at all, in the State tribunals. If there is any delay in their execution, or complaints of insufficient execution, there lies no power in the Federal Court to intervene and direct the State courts to carry them out. A federal court without the power to get its judgements enforced is a serious anomaly. In the words of the celebrated American jurist, Story, used in another connexion, it results in 'prostrating the Federation at the feet of the States and compels the national government to become a suppliant for justice before the judicature of the States which by the other parts of the constitution are really subordinate to it'.

It would have been better for the States to have allowed the Federal Court to operate directly on the State courts as an appellate court generally acts on courts subordinate to it, without bringing in the ruler between the two courts. This would have avoided giving rise to complications in future. A 'letter of request' generally denotes a communication between one sovereign and another with regard to the performance of some act necessary for the administration of justice in the territories of the first. But the phrase as used in the Government of India Act does not possess this meaning. As between two independent States it is not customary to decline to act on 'letters of request', but it is theoretically open, at least, for one sovereign not to comply with the request, and if he does so there is no sanction for compelling his obedience to it. But under the Act the ruler of a State is bound to transmit the 'letters of request' to the proper

[1] *Government of India Act*, sect. 211.

authorities and no discretion whatever is left to him in the matter. The Act constitutes him as a federal functionary and imposes upon him a ministerial duty. If in any case a ruler neglects to transmit 'a letter of request' a first-class constitutional issue will arise, as to whether the Court can compel him to perform his duty.

The rulers of Indian States are now regarded as sovereign princes and the highest judicial tribunals both in British India and in England have declined to exercise jurisdiction over them. In the case of *Statham* v. *Statham and the Maharaja of Baroda* where the question arose as to whether the Maharaja, an Indian Prince, could be cited as a co-respondent in an English Court, it was held that His Highness was a sovereign Prince, and therefore English Courts had no jurisdiction over him.[1] No statutory duties are now imposed on the ruler of an Indian State but under the new constitution it is very hard to reconcile his sovereignty with the obligations undertaken by him. His sovereignty, with all the immunities attached to it, may be regarded as having undergone a modification to the extent of the obligations undertaken by him, and where he fails to fulfil a ministerial duty the Court may claim jurisdiction over him and compel him to fulfil his duty.

There are no authorities directly bearing on the point. Under section 12 of the Commonwealth of Australia Act, the Governor of a State is made the authority for issuing writs for senate elections, and in the case *King* v. *the Governor of the State of South Australia* an application was made to the High Court for a mandamus to compel the issue of a writ. The Court held that the duty imposed by the Constitution on the State Governor was not imposed upon him as an officer of the Commonwealth and did not make him an officer of the Commonwealth. It was imposed upon him as the Constitutional Head of the State, and as part of the duty

[1] *Statham* v. *Statham*, 1912, P.D., p. 92.

owed by him to the State and the Crown, a duty of imperfect obligation resting upon political sanctions, and not enforceable by the Courts. 'The States are not subordinate to the Commonwealth, and the Commonwealth Courts cannot command the Constitutional Head of a State to do in that capacity an act which is primarily a State function.'[1]

The case is not an authority upon the point whether the Head of a State cannot be compelled to perform a federal ministerial function assigned to him by the Constitution. As the Indian Federal Court is not empowered by the Act to issue the writ of mandamus it cannot compel anybody to perform the duty imposed upon him. But item 53 of the Federal Legislative List, which the States are invited to accept, and Section 215 of the Act, empower the Federal Legislature to confer upon the Federal Court such supplementary powers as may be necessary for the purpose of enabling the Court more effectively to exercise the jurisdiction vested in it. It may well be that by exercising this power the Federal Legislature may confer the power of issuing the writ of mandamus on the Federal Court. Whether in such a case the Court may not compel the rulers to perform their ministerial functions by claiming jurisdiction over them is a point which the Princes would do well to consider before they accede to the Federation. So far as the Governors of Provinces and the Governor-General are concerned, the Act confers on them complete immunity from the jurisdiction of all courts in India.[2] But no such immunity is conferred on the rulers of the States. Where a ruler fails to transmit 'a letter of request' issued by the Federal Court to the proper authorities in his State, it is impossible to say what view the Court would take; whether it would regard him as nothing better than a federal functionary bound to

[1] 4 C.L.R. 1497.
[2] *Government of India Act*, sect. 306.

give effect to its orders and proceed against him, or look upon him as a sovereign Prince and decline to exercise jurisdiction over him, though such sovereignty is irreconcilable with the duties imposed on him by the Act. The answer lies in the future.

CHAPTER XI

THE FEDERAL RAILWAY AUTHORITY

THE railways in India may be considered from several points of view. Their total route mileage is about 42,950 miles, and they are the most important means of communication in a country of vast distances like India. They are as essential for the development of the trade and commerce of the country as for its defence and internal peace. The Indian railways are generally considered to form the third largest system in the world. It is, however, inaccurate to regard them as a single system under the control of the Government of India, for, side by side with the lines controlled by it, there are the railways built and worked by the States, some of which are compact enough to form independent systems by themselves. It would be more correct to classify the Indian Railways, broadly, into the States systems and the British-Indian system, and as they often traverse and serve the needs of more or less the same territory, they may be looked upon as rival systems in competition with one another.

The British-Indian system itself includes, in fact, several railways with a total route mileage of 36,000 miles. A major portion of the public debt of British India, aggregating as much as Rs.300 crores, has been incurred in connexion with railways, which represent, perhaps, the main productive asset of the Government of India. Though owned and worked either by the Government of India or by companies in which the Government of India has an interest, the lines in some cases run through the territories of the States. The land occupied by such of the lines of the British-Indian

system as pass through State territory were in most cases given free by the States. One of the distinguishing features of the British-Indian system is the diversity that prevails in the relations of the Government of India to the several Railways working under its aegis. Four of them, excluding the Burma Railways, are owned and worked by the Government of India; five are owned by it but worked by companies enjoying a guarantee of interest from it; and the remaining lines, which are mostly minor ones, are either the property of private companies or of District Boards. This diversity is not of much consequence, as the Government of India exercises, in respect of all railways in British India, certain general powers of control under the provisions of the Indian Railways Act, 1890; and, in addition, has acquired, under the terms of the contracts with the companies concerned, detailed control over the management of all railways, greatly exceeding what is secured to it under the Indian Railways Act.[1] This control is now exercised by the Railway Board, which is the Department of the Government of India that deals with railway matters, and works under the Member-in-charge of Commerce and Railways. The Board consists of three members, one of whom is the Chief Commissioner for Railways and also the Secretary to the Government of India in the Railway Department. Orders issued over the signature of the Secretary are the orders of the Government of India.

The States railways are linked at convenient points with the British-Indian system with which they form through routes of communication, but they are in fact wholly independent of it and form separate systems by themselves. They have been built by the States concerned and managed and worked by them. The total route mileage of such lines is about 4960 miles. Hyderabad and Mysore own a fairly long mileage of railways and derive a considerable revenue by

[1] *Report of the Railway Board on Indian Railways for* 1933–4, vol. i, p. 86.

working them. Bikaner has constructed at its own expense more than 800 miles of railway, which brings in a handsome revenue of nearly Rs.50 lakhs to the State. Similarly Gwalior, Jodhpur, and several Kathiawar States administer lines of their own. But the States find that their liberty to pursue an independent railway policy best fitted to their individual needs is hampered by the general control which the Government of India exercises over them. Some control, however, was necessary for some sort of co-ordination both in planning and in the administration of railways in the interests of the country as a whole, but this co-ordination has been achieved by sacrificing the interests of the States to those of British India. The co-ordination has proved, in effect, to be an undue centralization of control of railway development and policy. A State railway is supposed to be worked according to the railway laws of the State, but it is only by a legal fiction that it may be said to be so worked. In actual practice, in the actual working of a State railway, the Government of India permits no departure from the general principles under which the British-Indian railways are worked. Strict conformity with the rules approved by the Government of India for adoption on the railways under its own control is insisted on and secured in the management of the States systems. The Railway Board lays down rules which the States have to accept and apply on their railways also. For instance, a State is not allowed to prescribe its own rates and fares on its railways, but is bound to adopt the maxima and minima rates and fares prescribed by the Railway Board.

Nor, again, is the position of a State very satisfactory in the matter of the construction of railways within its own territories. It is not allowed to build a new line unless it obtains the permission of the Government of India to do so, and, if the proposal fails to meet with the approval of the latter, it will have to be given up, however important and

necessary it may be for the economic development of the State. Instances of the restriction imposed upon railway construction in the States are numerous, and the States naturally feel in such cases that their interests are subordinated to the vested interests of the lines owned or guaranteed by the Government of India. A proposal to connect the Mysore State with Southern India by the extension of the Mysore Railways with the South Indian system has been pending for decades; yet, for one reason or another, the proposal cannot be pushed through, and the Mysore Railways have to rest content with being isolated, with a blind alley on their southern border.

Again, a proposal to construct a new line in British India may sometimes affect a neighbouring State, and its finances may suffer by the diversion of traffic from the State system, which may be the result of such a construction. But the State is helpless to prevent such injury to its legitimate interests. It may receive formal information of the proposal as a matter of courtesy, but the proposal itself is treated as belonging exclusively to the internal economy of British India with which the States have no manner of concern.

The position of the States will undergo a change for the better when they join the Federation. The Act requires from such of them as desire to federate, a cession of powers under their Instruments of Accession pertaining to the following five items relating to Railways:

1. Safety.
2. Interchange of traffic.
3. Station and service terminal charges.
4. Maximum and minimum rates and fares.
5. Liability of railway administrations as carriers of goods and passengers.

In the case of a State owning a minor railway, that is to say, a railway wholly situated in the State itself and not forming a continuous line of communication with the British-

Indian system, the cession will be limited to two only of the above five items, viz. safety and responsibility of the administration of such a railway as carrier of goods and passengers.[1]

The regulation of the powers so transferred will, as in the case of the other powers assigned by the States to the Federation, thenceforward fall within the competence of the Federal Legislature, and all laws made by it in respect of them will apply *proprio vigore* to the railways in the Federated States. The executive powers of the Federation in these matters will be exercised by a Statutory Board, known as the Federal Railway Authority, which will consist of seven persons appointed by the Governor-General, three of whom may be appointed by him in his discretion. No special provision is made for the representation of the States on the Authority, but the Governor-General may perhaps include one State member in the three persons whom he is to appoint in his discretion. The Authority will practically take the place of the present Railway Board, so far as its relations with the railways comprised in the British-Indian system are concerned, and will succeed to all its rights and obligations. In relation to the States systems, it will exercise, in place of the political control now exercised over them by the Government of India, a supervisory and administrative control limited to the five matters specified above.

The question of creating such an Authority was not raised at any one of the Round Table Conferences, but it was one of those subjects which came up for discussion at Delhi before the Consultative Committee presided over by His Excellency the Viceroy. The broad principle that there should be a Statutory Board, and that it should be constituted by a statute passed by the Indian Legislature was accepted by the Committee at Delhi. But His Majesty's Government did not concur in this opinion. They stated it as their opinion in

[1] *Government of India Act*, schedule 7, list 1, entry 20.

the White Paper that the Constitution Act itself should place the control of the railways in the hands of a Statutory Authority. As thus envisaged, the Authority was to be nothing more than a body entrusted with the task of managing and working the British-Indian system on business principles, free from political interference by the Federal Legislature. It was to be co-ordinate with the State railway administrations, and it was not contemplated that it should have any supervisory powers over the latter. Later an expert Committee was appointed during the sittings of the Joint Parliamentary Committee to investigate the questions of detail arising out of this proposal. In this Committee it was represented on behalf of the States that separate arrangements would be required for railways owned by the States. Consequently, the outline proposals submitted by the Committee to the Secretary of State for India omitted to make any provision regarding the relations of the Authority to the States systems.[1] The Act, however, vests the Federal Railway Authority with the executive authority of the Federation. The State Railways are thus placed in subordination to a railway authority which is almost entirely British-Indian in outlook and which will own and control railways of its own in competition with the State railways. The Federal Legislature could in its enactments confer wide executive powers on the Authority. It could, for instance, be empowered by a law of the Federal Legislature to prescribe the limits within which rates and fares might be imposed by the States on their railways. Or, again, it might be authorized to prescribe standards of safety or regulate the points at which through traffic from the States systems should be interchanged with the railways in British India. The States would be under a constitutional obligation to carry out such regulations.

It is strange that the Act should thus depart from the

[1] *Joint Select Committee Report*, p. 235.

proposals made in the White Paper, overlook the representations made by the States in the expert committee, and place the railway administrations of the States under the control of the management of the rival British-Indian system with which they are in daily competition. The States systems could be crippled and their working made wholly unremunerative by the Authority meting out differential treatment to them and to the railways which it controls itself. Full provision is, however, made in the Act for protecting the States against such unfair executive action at the hands of the Authority. If, for example, in the matter of rates and fares, station and service terminal charges, or the interchange of traffic, the Authority should give to a State any directions which the State feels to be unfair or discriminating against it, it may complain to the Railway Tribunal, a quasi-judicial body set up by the Act to entertain and decide such complaints.[1] Similarly, the States are safeguarded against the possibility of their being denied reasonable through-traffic facilities on the railways under the direct control of the Authority, viz. the British-Indian system. A statutory duty is laid on the States and the Authority to afford mutual through-traffic facilities on the railways under their control, to avoid undue preferences and to check unfair or uneconomic competition. If this duty is disregarded by the Authority, and a State thinks that the Authority is not treating it, in respect of traffic facilities, as fairly and with the same privileges as it treats *inter se* the various systems which it controls, the State may lodge a complaint with the Railway Tribunal.[2]

The Tribunal which is to hear these complaints will consist of a Judge of the Federal Court as President, and two other persons selected to act in each case by the Governor-General, in his discretion, from a panel of eight persons appointed by him, and possessing railway, business and

[1] *Government of India Act*, sect. 194. [2] Ibid., sect. 193.

administrative experience. When any complaint is made to it either by a State or by the Authority, the Tribunal will proceed to hear the case and make such orders, including such *interim* orders as the circumstances of the case may require; and both the Authority and the State are bound to give effect to its orders. An appeal will lie from the decision of the Tribunal to the Federal Court on a point of law, but no further appeal will lie from the decision of the Federal Court.[1]

As regards the construction of new lines, the Act empowers the Governor-General to frame rules requiring the Authority and any Federated State to give notice of any proposal for building a new line. Such rules shall contain provisions enabling objections to be made by the Authority or by a State on the ground that the line in question, if constructed, would lead to unfair or uneconomic competition. If the objection is not withdrawn within a prescribed period, the Governor-General shall refer to the Railway Tribunal the question whether the proposal ought to be carried into effect, either without or with such modification as the Tribunal may approve; and the proposal shall not be proceeded with except in accordance with the decision of the Tribunal.[2] This prevents either the Authority or a State from pushing through a proposal without the knowledge of the other, and if a State thinks that the construction of a new line is really disadvantageous to its own interests, it may take steps to convince the Tribunal of the unfairness of the proposal. It is open to the Tribunal to give a verdict either modifying or rejecting the proposal.

These provisions are very salutary and should be greatly welcome to the States. They remove the existing disabilities of the States and improve their position in three respects. Firstly, they provide a quasi-judicial machinery for the settlement of railway disputes between the States and the

[1] *Government of India Act*, sect. 196. [2] Ibid., sect. 195.

Government of India, which are now decided *ex parte* by the latter. The Tribunal which is set up to determine these disputes follows in its constitution the Railway and Canal Commission in England, and this should inspire confidence in the States that their cases will get a fair and impartial hearing. Secondly, a State is given a right, which it does not now possess, of questioning the construction of new lines in British India likely to affect it adversely by leading to unfair competition, and of taking the matter before a tribunal for an impartial decision. And, thirdly, and most important of all, States will be enabled to undertake railway development within their own territories, provided it does not lead to unfair competition with the British-Indian system: and the question whether or not it so competes will be settled not, as at present, by an executive decision of the Government of India, but by an impartial tribunal.

The Joint Parliamentary Committee observed that 'the Constitution Act should contain adequate provision to ensure reasonable facilities for the States railway traffic and to protect its system against unfair and uneconomic competition or discrimination in the Federal Legislature'. The Act affords, as pointed out above, full protection to the States against administrative discrimination at the hands of the Federal Railway Authority, but contains no provision against legislative discrimination. It is possible for the Federal Legislature to discriminate against the States in its railway enactments, though in a legislature in which the States are represented with a weightage, such a possibility is very remote and may be left out of account.

There remains the question of jurisdiction over railway lands in the States. It has been the policy of the British Government to obtain from the States full civil and criminal jurisdiction over the lands occupied by railway lines in their territories and to introduce its own jurisdiction into them.

Article 15 of the Instrument of Transfer of Mysore, 1881, which may be taken as giving expression to this policy, provides that 'if the British Government at any time desires to construct or work by itself or otherwise, a railway in the said (Mysore) territories the Maharaja of Mysore shall grant such lands as may be required for that purpose and shall transfer to the Governor-General in Council plenary jurisdiction within such lands'. The obligation to cede jurisdiction imposed by the Article was originally intended to apply to lands occupied by railways constructed by the British Government. But it has been extended gradually to include even railways built by the State at its own expense. The Bangalore–Harihar line in the Mysore State, which covers a distance of more than 200 miles, was constructed from funds provided by the State, but jurisdiction over the entire length was taken out of the hands of the State in 1896. Latterly, this policy seems to have been modified and a State is allowed to exercise jurisdiction over isolated lines of railway, but jurisdiction still continues to be exercised by the British Government over what are regarded by it as main lines.

The reasons for so acquiring jurisdiction are stated thus by Sir William Lee-Warner: 'The defence, as well as the general welfare, of the Empire depend upon the efficient working of through lines of communication. There must be one law affecting the administration and the working of a line of railway throughout its whole length. The very safety of the passengers requires uniform precautions against any neglect of duty. The vehicles must be safe, the line and its bridges looked after, and the various details of the traffic department regulated by one common law. The railway police employed on the several parts of the line must work together. The Kathiawar railway traverses more than a dozen jurisdictions in the space of a hundred miles. If the police were hampered in their duties by extradition, and by the constant necessity for adjusting their procedure to the

requirements of a new law at each station, the protection of the lives and property of the passengers would be compromised. The interests of the public require through-booking of goods and passengers, and with divided jurisdictions the responsibility for loss or injury could never be fixed'.[1] To secure this uniformity of law and continuity of jurisdiction, a cession of full civil and criminal jurisdiction over the lands occupied by railways is, in the first instance, obtained from the States, and the Governor-General then applies to such lands the Indian Railways Act and other requisite laws which are in force in British India, and establishes the necessary courts for their administration under the provisions of the Foreign Jurisdiction Act. A common code of railway law throughout India is thus secured but at the expense, to some extent, of the sovereignty of the States. State laws are not applicable to these lands, and the State Authorities can exercise none of their powers in them. They are, for all practical purposes, taken out of the hands of the State, and all that is left to it is a bare reversionary right.

The difficulties to which this artificial arrangement has led can hardly be exaggerated. A State is practically split from one end to the other by a narrow strip of land over which it has no jurisdiction. The State Police are hampered and embarrassed in the prevention and detection of crime, for an offender has only to cross a railway hedge to defy their authority, and then they have to depend entirely on the cooperation of the Railway Police, a distinct force, maintained by the British Government. The two forces do not always act in unison and instances of friction and jealousy between them are not uncommon. The people are unnecessarily put to the greatest inconvenience. The courts of the State are closed to them, and to obtain redress in a trivial matter they are compelled to travel from one end of the line to courts established by the Governor-General at the other

[1] *The Native States of India*, p. 362.

end, situated sometimes more than 200 miles away. Parties and witnesses are unwilling to undertake this long journey and this has tended to paralyse the arm of justice. Though the jurisdiction ceded was intended to be exercised, in the main, for railway purposes, the municipal laws of a State are held to be inapplicable to railway lands, and much difficulty is experienced in the collection of municipal taxes from railway employees. Similarly, the fiscal authority of a State over these lands is denied, and States, like Mysore, which levy income-tax, are prevented from levying it on the profits of railway companies, though such profits are earned within their territories, and, in some cases, by working the lines belonging to the State. The Government of India has repeatedly disclaimed any right to exploit these areas for fiscal purposes, but this avowal has not been translated into actual practice. It levies its own income-tax on the railway companies and thus deprives the States of a good portion of their revenue. The Indian States Inquiry Committee recognized that the States had a grievance in this matter that required to be remedied. They recommended that railway employees and railway companies should pay income-tax to the States where such a tax is levied. But though the Committee assumed that 'this grievance will be remedied before very long',[1] nothing has been done in this direction, though four years have passed since the recommendation was made.

With a view to avoiding these difficulties the States have for some time past been asking for restoration of jurisdiction, but the British Government has not acceded to this demand. It is urged, as a reason for not acceding to the request of the States, that it is impossible to administer the railways efficiently with due regard to the safety of passengers and goods if there are partitions of jurisdiction over short distances, as would be the case if jurisdiction were retroceded

[1] *Indian States Inquiry Committee*, para. 179.

to the States. The Bombay, Baroda and Central India main line is often quoted as an instance to show the difficulties arising from such a situation. It is said that if every State through which the line passed, exercised jurisdiction over it between Bombay and Delhi, a train would encounter no less than thirty-eight jurisdictions during the course of its journey. But this cannot surely be a reason for denying retrocession to States like Hyderabad and Mysore which possess a long and unbroken mileage of railways and an efficient police force. With the advent of Federation, however, there will be no difficulty in meeting the wishes of the States, as the continuance of the present arrangement becomes unnecessary under the Federation. As regards the jurisdiction now exercised by the Crown, under the Foreign Jurisdiction Act, over railway lands in the States, the Act provides that, in all matters in which the Federal Legislature, the Federal Court, and other Federal authorities are empowered to act in a State by virtue of its Instrument of Accession, the powers of the Crown shall not be exercisable by it but by the organs of the Federation.[1] The jurisdiction now exercised by the Crown will thus undergo a diminution, and only as much of it as does not vest in the Federation will continue to be exercisable by the Crown. The retention of this residuary jurisdiction by the Crown will then be as unnecessary as the administration by it of isolated tracts of State territory for purposes of cantonments and civil stations. The main reason for acquiring jurisdiction from the States was the need to secure uniformity of law and procedure in all railway matters. Such uniformity in all matters in which uniformity of law is deemed essential, would automatically follow the entry of the States into the Federation. In all federal matters the Federation will exercise its authority both over the railway lands in the States and over those in the Provinces. But in the non-federal sphere,

[1] *Government of India Act*, sect. 294.

while the Provincial Governments will exercise their authority over the lines passing through their Provinces, in the States this authority will not be exercised by the States but by the Crown under its extra-territorial powers. There is no reason why it should do so and go to the length of having its own courts and officers to punish a petty theft in a goods shed or to decide a breach of ordinary contract concluded in railway premises. The States should ask for the reversion of this residuary jurisdiction to themselves, and insist upon being put in the same position as the Provinces in relation to railway lines passing through their territory.

CHAPTER XII

PARAMOUNTCY

So far I have dealt with the Federal Constitution in its relations to the States. There remains the question of paramountcy—a compendious term generally used to indicate the rights which the Crown can exercise in its relations to the States as the Paramount Power. These rights are not affected by the accession of the States to the Federation, except in federal matters, but will continue to be exercisable as before.

Hitherto paramountcy has been exercised by the Government of India, which meant the Governor-General in Council. But the true constitutional position in which the Government of India has stood towards the States has been somewhat vague and undefined. It has been by no means clear whether it exercised such powers by virtue of its own authority as the Paramount Power or acted as the agent of the Crown and His Majesty's Government. The treaties and engagements which gave birth to paramountcy were concluded between the States and the East India Company acting under the authority derived by it from Royal Charters and Acts of Parliament. So long as the Company remained in existence it dealt with the Indian States under the general supervision and control of the Board of Control and the Court of Directors in England. Sometimes strong and self-willed Governors-General acted wholly in opposition to the express wishes of those two authorities. When the Government of India was directly assumed by the Crown all the treaties and engagements made with the East India Company were declared to

be binding on the Crown. The enforcement of these treaties, the fulfilment of the obligations arising under them and the interpretation of the treaties, all lay with the Government of India under a so-called 'appellate' or supervisory jurisdiction of the Secretary of State for India, who took the place of the Board of Control and the Court of Directors. But very rarely was this 'appellate' jurisdiction invoked by the States, and cases where the Secretary of State for India had set aside the decision of the Government of India were rarer still.

It was of course quite possible to make a distinction in the functions of the Governor-General between those exercised by him as the representative of the Crown and the Imperial Government towards the States and those exercised by him as the Governor-General or the executive head of the Government of British India. But as he was responsible in both capacities to the Secretary of State and to Parliament it was unnecessary to make such a distinction. But it became very important when the question of introducing some measure of responsible government in British India was mooted in 1917. The Princes became very apprehensive that, if matters were left where they were, the Government of India itself might come to be regarded as the Paramount Power, and paramountcy might in course of time be exercised by a government responsible to the British-Indian electorate, and that they might ultimately find themselves placed in subordination to the people in British India. They contended, therefore, that their treaty relations were with the Crown in its imperial capacity and that the rights and obligations of the Crown under these treaties should not be assigned without their consent to an Indian Government in British India responsible to the Indian Legislature.

The first clear statement of this case was that made by Maharaja Holkar of Indore in a letter written by him with reference to the recommendations contained in chapter X of the Montagu–Chelmsford Report. He wrote: 'Before

proceeding further it is necessary to invite full attention to the basic truth that His Highness's treaty relations are with the British Government maintained in India by His Excellency the Viceroy as the representative of His Majesty the King-Emperor. An autonomous government of India controlled by elected or nominated representatives of British India is not the power with which His Highness's ancestors entered into treaty or political relations. To such a government His Highness has never owed and never can owe any obligations, nor can British India or its would-be autonomous government rightly advance any claim to occupy in political relations to His Highness the position accorded by treaty to His Majesty and His Government. With an autonomous government presided over by a Governor-General, British India can occupy with regard to Indore the position of a sister state like Gwalior or Hyderabad, each absolutely independent of the other and having His Majesty's Government as the connecting link between the two.'

This attitude of the Princes caused some alarm to leaders of political thought in British India, who thought that if this contention were upheld, it would lead to setting up an Ulster in India in the form of the States. It meant, in their opinion, virtually putting a bar against India ever attaining Dominion Status, as it would make it necessary for the Crown to retain the control of the army in India in its own hands in order to enable it to discharge its treaty obligations to the States. The theory of a *vinculum juris* between the Princes and the Crown, otherwise than in its capacity as the sovereign of British India, was controverted by the eminent Indian jurist Sir P. S. Sivaswami Iyer and the Nehru Committee. Sir P. S. Sivaswami Iyer contended that the matters governed by the treaties related to persons and things in India and arose out of the relations of the Princes with the sovereign of British India, and that the right to enforce the treaties, therefore, vested in the authorities for the time being

charged with the administration of India, irrespective of such authority being responsible to the Indian Legislature or not.[1]

The Princes, however, placed the matter before the Indian States (Butler) Committee who accepted the views of the Princes. The Committee agreed that the relationship of the States to the Paramount Power was a relationship to the Crown, and that the treaties made with them were treaties made with the Crown, and that those treaties were of continuing and binding force as between the States which made them and the Crown.[2] The Committee accordingly gave it as their opinion that the Paramount Power is the Crown acting through the Secretary of State for India and the Governor-General in Council in responsibility to the Parliament of Great Britain.[3]

This view has been accepted by His Majesty's Government and the Act gives effect to it. The functions of the Crown in its relations to the States as the Paramount Power are separated from its functions as the executive head of the Federation. A new office, known by the name of Crown Representative, is created for the purpose of carrying on the functions of the Paramount Power, while the Governor-General will exercise those belonging to the latter class. The Crown may appoint one person to fill both offices, and the Viceroy of India, who is so appointed, is both the Crown Representative and the Governor-General of the Federation.[4] He thus sustains a dual role, and in each of them he will be responsible to a different authority. In his capacity as the Governor-General he is responsible to the Federal Legislature in all federal matters except where he is required by the Government of India Act to use his discretion and his individual judgement. In his capacity as the Crown Representative he remains responsible to the Secretary of

[1] *Indian Constitutional Problems*, p. 210.
[2] *Indian States Committee Report*, p. 23.
[3] Ibid., p. 13.
[4] *Government of India Act*, sect. 3 (2).

State for India and to Parliament. Power is retained under the Act to implement the Crown's obligations to the States. Thus where it becomes necessary for the Crown to employ armed forces to discharge its obligation to maintain the internal security of a State, the Crown Representative may send a requisition to the Governor-General for the assistance of such forces, and the Governor-General is bound to render such assistance.[1] None of the Federal authorities will have anything to do with paramountcy, the underlying principle of the Act being that the Viceroy should keep his two capacities rigidly separate and not allow the line of demarcation between them to become blurred or indistinct.

There has been a good deal of controversy in recent years with regard to the nature and scope of paramountcy. The issue has become somewhat clouded by the failure to draw a distinction between States in respect of which the Crown is really the sovereign and those over which it is only paramount. The majority of States in Central India are the creations of the British Government and are held as fiefs under *sanads* or grants conferred by it. These States were included in the territories ceded to the British Government in full sovereignty by the Peshwa under the treaty of Bassein in 1802. They were annexed by it and their existence as political units was definitely brought to an end. But, from 'motives of justice, benevolence, and good faith', the British Government gave them a fresh lease of life by re-creating them and continuing them to the chiefs on their executing 'articles of obligation and allegiance'. These articles bind the chiefs to implicit submission, loyalty, and attachment to the British Government and require them to govern well, to increase the cultivation of their territories and make the ryots contented, to deliver up criminal refugees, to seize thieves and robbers and make them over to the British Government. The chiefs are further liable to such control,

[1] *Government of India Act*, sect. 286.

not inconsistent with their engagements, as the British Government may see fit to exercise, and their rights and powers are limited to such as have been expressly conferred on them. The British Government on its part undertakes not to molest or resume the lands so long as the chiefs observe and adhere faithfully to the articles. The origin and tenure of the States in Bihar and Orissa and the Central Provinces are very similar. All these States owe their existence to grants given by the British Government and though they are entitled to a separate existence, they are liable to be resumed by it on failure of the chiefs to fulfil the conditions of the grant. The powers of these States are derivative and expressly limited to the terms of the *sanads*, the residuary sovereignty in respect of them being vested in the Crown.

In marked contrast to the feudatory States are the semi-sovereign States, the powers of which are in no way derived from the Crown but are inherent in them as States. They were not annexed and re-created by the East India Company when they came into contact with it like the *sanad* States. The pressure of the political forces of the times drove them to seek British protection and to enter into permanent alliances with the British Government for the defence and security of their territories. Such alliances were cemented by formal treaties in the case of nearly forty States. The gist of all these treaties was that the State transferred to the Crown the whole conduct of its foreign relations and the entire responsibility of defence, and the Crown undertook in return to protect the State and its ruler against all enemies, internal and external, and to support the ruler and his lawful successors on the *gadi*. The other States placed themselves under British protection without making any treaty, surrendering, by implication, such powers as were necessary to enable the Crown to discharge its function of protection. In both cases the States were the grantors and the Crown the grantee. The States surrendered to the

Crown certain attributes of sovereignty, which constitute paramountcy in the hands of the Crown, while reserving to themselves all powers which were not so surrendered.

Paramountcy is thus contractual in nature and denotes, not full sovereignty over the States as in the case of the *sanad* States, but a definite relationship between them and the Crown. It was no mythical monster suddenly appearing in the arena of inter-State relations in India and making itself felt at the same time over all the States, but an individual creation of each State when it contracted the alliance of the British Government. As each State came under British protection, it invested the Crown with paramountcy by surrendering to it some of its sovereign powers, the measure of sovereignty surrendered depending on the political exigencies of the moment. Those which entered into alliance while the East India Company had not yet become the dominant power in India surrendered the minimum of powers, while those which came later when the Company had practically become supreme were able to secure protection by surrendering larger powers. It follows, therefore, that the rights and obligations of the Crown vary with each State, and that it can exercise in relation to a State those powers which were surrendered to it, or are incidental or necessary to the powers so surrendered. But whatever these variations may be, the Crown can, by virtue of its paramountcy, exercise with regard to all States the right to conduct their foreign relations and the right to take measures to maintain their internal and external security, both of which are derivable from every treaty or from the fact of protection.

It is said by those who dispute the contractual nature of paramountcy that, when the Indian States came into contact with the British Government, they were all subordinate or tributary to the Moghal Empire or the Marathas, and that none of them was possessed of full sovereignty. But this view is in total contradiction to the preamble of some of the

treaties. Thus the treaty of 1812 with the State of Orchha expressly mentions that the rulers of that State were in possession of their territory 'for successive generations without paying tribute or acknowledging vassalage' to any other power. It is true that many States were once subordinate to the Moghal Emperors and later to the Marathas, but such subordination was only nominal and did not stand in the way of their exercising, like any independent State possessing international status, the sovereign powers of waging war, and treating independently with other powers and carrying out the obligations undertaken by them. Nor again did the East India Company so scrupulously observe the principles of international law in its dealings with the Indian States as to recognize only the authority of the Moghal Emperor and the Peshwa, and to refuse to treat with the States subordinate to them on the ground that they were not fully sovereign.

The condition of India and the position which the Company held in the eighteenth century were analogous to those of the Holy Roman Empire between the Peace of Westphalia in 1648 and its extinction in 1806. The States of that empire acknowledged the Emperor as their suzerain, but they were formally empowered to enter into foreign relations of great importance on their own account, and in their own names, and the Emperor and the Imperial Diet were quite unable to enforce the formal limitation of their foreign relations. Therefore, following fact, and not constitutional theory, the States of the empire were not treated by the other powers as semi-sovereign, but as full members of European international society. The Moghal Empire had fallen into a similar decrepitude, and its provincial governors, as the Nizam of the Deccan and the Nawab Vazir of Oudh, asserted a practical independence similar to that of the German States, but, again similarly, without wholly ignoring the nominal sovereign. The confusion into which India fell was

increased by the apparition of insurgent powers, so that the Company was compelled to provide for the defence of its own territories. In doing so it became an Indian power enjoying the same practical independence as the other powers who had risen on the ruins of the Moghals. It treated those powers as internationally sovereign and made alliances, wars, and peace with them, just as England and France acted with regard to the Elector of Brandenburg or of Bavaria.[1]

The States retained, after coming under British protection, varying degrees of internal sovereignty with which the Paramount Power has no right to meddle. But the fact that it had undertaken to protect the States against all enemies was sometimes made the pretext for interfering in their domestic affairs. This principle of interference was enunciated by Wellesley in relation to Oudh. As the Nawab's 'authority is upheld by the terror of our name and exercised by the immediate force of our arms', and as the Nawab himself 'is sustained exclusively by his connexion with the Company's Government and the reputation and honour of the British nation', the Governor-General claimed that the right to interfere in any manner whatsoever rested with the Company.[2] The process of interference commenced as soon as a State came under British protection. Hardly had the treaty with the Nizam been concluded before he was forced to appoint a nominee of the Company, Mir Alum, as his chief minister. Within six years after the Maharaja of Jodhpur was acknowledged as 'the absolute Ruler' of his country, the Company interposed its authority between the Maharaja and his subordinate chiefs to secure terms for the latter. Kashmir was held by Maharaja Gulab Singh, under the treaty of 1846, 'in independent charge', but two years later the strongest threats of interference were held out to him in view of misgovernment there.

[1] Westlake, *Chapters on International Law*, pp. 193–4.
[2] Panikkar, *British Policy towards Indian States*, p. 35.

The Company had not, however, developed a settled policy towards the States. While it was ready to interfere, sometimes even in minute details, to secure its own interests or to derive a profit for itself, as in the case of Oudh, it still recognized that the States stood in independent alliance with it and that the treaties conferred no. right on it to interfere in their internal affairs. There was neither continuity nor consistency of policy. Very often it pursued a policy of absolute non-intervention even in cases where the ruler himself invoked its interference. When it was suggested to the Governor-General, Lord Hastings, that the Company should intervene in the affairs of the Nizam in the interests of good government, he strongly repudiated the suggestion, and observed: 'Over States which have by particular engagements, rendered themselves professedly feudatory, the British Government does exercise supremacy; but it never has been claimed, and certainly has never been acknowledged in the case of Native Powers standing within the denomination of allies. Although a virtual supremacy may undoubtedly be said to exist in the British Government from the inability of other States to contend with its strength, the making of such superiority a principle singly sufficient for any exertion of our will would be to misapply and to pervert it to tyrannical ends.' In Indore, in 1835, the Maharaja, Hari Rao, was pursued into his palace by a party of his discontented subjects who sought to assassinate him and his minister. But the Governor-General refused to budge an inch from his attitude of supreme unconcern, because interference would require a prolonged treatment of the internal affairs of the State, and this, it was asserted, was inconsistent 'with the position of His Highness and the policy of Government'. Again, when General Fraser, Resident in Hyderabad, urged Lord Dalhousie to intervene to set affairs right in the Nizam's dominion, the Governor-General clearly stated that the acknowledged supremacy of the British Government in

India did not justify it in disregarding the positive obligations of international contracts, in order to obtrude on Native Princes and their people a system of subversive interference unwelcome alike to people and prince.

After the assumption of the Government of India by the Crown in 1858, its attitude towards the States became clear and well defined. As Lord Canning put it, with the suppression of the Mutiny, the political system which the Moghals had not completed and the Marathas never contemplated had become an established fact of history. The last vestiges of the Royal House at Delhi, from whom the British Government had long been content to accept a vicarious authority, had been swept away, and the Crown of England stood forth the unquestioned ruler and paramount in all India. The States were regarded as forming part of the Imperial polity and were taken to be a charge equally important with the territories directly administered by the Crown. The rulers were assured at the time that the treaties and engagements made by them with the East India Company were accepted by the Crown and would be scrupulously maintained by it. But in actual practice it was assumed that the supremacy of the Crown justified the imposition of additional obligations on the States. The British Government no longer hesitated to travel outside the treaties and impose its will on them. The policy of non-intervention was definitely abandoned, and interference in internal affairs was perfected into a system and made all-pervasive. The distinction between the feudatory States and the semi-sovereign States which the Company had kept in view in its dealings with the States was given up, and all the States were treated on the same level. It was assumed that the rights which the Crown could exercise over the Ruler of Panna, who held his territory as a feudatory of the British Government, could equally be exercised over the Ruler of the Deccan, 'the Faithful Ally' of the British Government. With the growth of new conditions

valuable fiscal and economic rights, which have already been referred to, were acquired from the States.

New theories and doctrines were elaborated, and under their guise rights and obligations wholly at variance with the spirit of the treaties were asserted and enforced. One such theory was that the Crown was the successor of the Moghal Emperor. On the analogy of the formalities observed by a feudatory of the Moghal Empire on the occasion of his succession to his ancestral *gadi* in paying a *nazarana* to the Emperor and getting a confirmation from him, it was claimed that the succession of a ruler to his ancestral *gadi* required for its validity the sanction of the Paramount Power. Another doctrine was that the Princes were feudatories of the Crown. As a consequence of this doctrine the British Government claimed the right of administering a State during the minority of its ruler. This practice was borrowed from the armoury of Norman feudalism, in which the King claimed wardship over his minor barons. The climax of such theories was reached during the viceroyalty of Lord Curzon. In his speech at the investiture of the Nawab of Bahawalpur he frankly stated that 'the sovereignty of the Crown is everywhere unchallenged' and that 'it has itself laid down the limitations of its own prerogative'.

Coming to the specific rights claimed and exercised by the Paramount Power, the most important of them is that of intervening in the internal affairs of a State in case of gross misgovernment, deposing the ruler where he has flagrantly abused his powers, and of making such arrangements for the administration of the country as may appear to it to be suitable under the circumstances. This right was for the first time exercised in the case of Mysore. Under the treaty of 1799 with that State a tribute of Rs.24½ lakhs was imposed, and with a view to secure that there was no failure in the payment of the tribute, it was further provided that whenever the Governor-General should have reason to apprehend

such failure, he shall be at liberty 'to assume and bring under the direct management of the servants of the Company such part or parts of the territorial possessions of the Maharaja, as shall appear to the Governor-General necessary to render the said funds efficient and available'. In 1831 there were some disturbances in one of the north-western districts of the State which were quelled with the aid of the subsidiary forces stationed at Mysore. The British Government, however, attributed these disturbances to the alleged maladministration of His Highness, and interpreting the above provision of the treaty as authorizing it to intervene in cases of maladministration, deprived the Maharaja of his ruling powers and assumed the administration of the country into its own hands.

It has been stated that Lord William Bentinck appointed a Committee to inquire into the origin of the disturbances in Mysore, and that their report having brought to light rampant maladministration, the then Governor-General deprived the Maharaja of his ruling powers.[1] This is historically unsound. It is true that a Committee was appointed as aforesaid. But it was two years after the Maharaja was deposed that the Committee submitted their Report, which went to show that the Maharaja was no more to be blamed for the disturbances than the British Government was for similar disturbances which occurred at the same time in British districts bordering upon Mysore. In the opinion of an eminent British authority of the time, these disturbances were not in themselves 'a sufficient justification for depriving the Maharaja of his ruling powers'. Lord William Bentinck also came to realize that he had committed a grave mistake, and that a strict interpretation of the treaty did not justify such a right of intervention. The treaty warranted an assumption of the country only when there was a failure in the payment of the tribute, but the assumption was actually made on what was

[1] Panikkar, *British Policy towards Indian States*, p. 114.

supposed to be the Maharaja's misgovernment. Further the treaty authorized the Company to assume 'such part or parts' of the country as might be necessary for securing the tribute, but the whole country had been assumed. Lord William Bentinck sought to rectify his mistake and proposed to restore the country to its Maharaja. But this proposal was turned down by the Home Government who decided to keep the country under British management until 'a better system of administration' was introduced in it. Though this object was realized in a short time the country was retained indefinitely and it was not till Parliament intervened that it was decided to hand back the country to the Maharaja's son on his attaining his majority.

The Mysore case stands unique in one respect. There have been several depositions of rulers in the history of the relationship between the States and the Paramount Power. The members of the princely order might have felt agitated over them, but there is hardly one instance where the people have shown any concern for the deposed ruler. In Mysore, however, the people took up the cause of their Ruler in earnest. They submitted to Parliament monster petitions, signed by thousands, praying for the restoration of their Maharaja's powers, which, coming as they did from those whom he was alleged to have misgoverned, were sufficient to show how shallow were the grounds of accusation against him.

In the beginning the right of intervention in cases of misgovernment was somewhat erroneously sought to be justified by the treaties. Later such intervention was resorted to on the ground that it was inherent in paramountcy, as a corollary of the obligation to maintain the ruler against all enemies, internal and external. This was made clear by Lord Northbrook in his *kharita* to Maharaja Malhar Rao Gaekwar who was reported to have flagrantly abused his powers. A commission was appointed by the then Governor-General, Lord Northbrook, to inquire into the administra-

tion. The Gaekwar objected that the treaty did not empower the British Government to conduct such an inquiry. The Governor-General elaborating the principles, on which such right of intervention was based, stated: 'It must not be forgotten that it is to the Paramount Power alone that the inhabitants of a Native State can look for protection against misgovernment. The chiefs no longer have to fear the revolutionary outbreaks which were of old the remedy for tyranny and oppression, but which could not be tolerated in any part of the dominions of the Queen-Empress. Misrule on the part of a Government which is upheld by the Paramount Power is misrule in the responsibility for which the British Government is in a measure involved: It becomes therefore not only the right but the paramount duty of the British Government to see that the administration of the State in such condition is reformed and that gross abuses are removed.' This right is exercised in a variety of ways, by investing the Resident with power of control over the finances, by assuming for a time the management of either a part of or the entire State, by removal of evil advisers and, in short, whenever intervention has been deemed by the British Government necessary in the interests of the ruler or his subjects.

The right of intervention in case of misgovernment has been freely exercised, and the Princes have come to acquiesce in it. They are, however, afraid that it may be extended to cases where the necessary condition precedent to its exercise, viz., misrule, does not exist. Their fears in this respect seem to be well founded, for the right has been exercised in the past on other grounds also. From the published correspondence with regard to the curtailment of powers of the Maharaja of Udaipur, it appears that old age was the reason assigned for intervention. In another case the State and its ruler were divorced on the ground of incompatibility of temperament!

Closely connected with the right of intervention in case of misrule is the right claimed by the Paramount Power to conduct an inquiry in cases where a ruler is accused of having committed a crime and to take action upon the result of such inquiries. This right is said to be based on the principle that 'the commission of crimes by a ruling chief in his State gives justifiable cause for discontent on the part of his subjects and is likely to lead to disturbances affecting the interests and responsibilities of the Paramount Power'. When Maharaja Malhar Rao Gaekwar was suspected of the offence of attempting to poison the Resident at Baroda, he was arrested and openly tried before a Commission consisting of British Officers and the Maharajas of Gwalior and Jaipur and Raja Sir Dinkar Rao. The Commission were divided in their opinion. All the same the Gaekwar was deposed on general grounds of misrule and maladministration. A similar inquiry was conducted in the case of Maharaja Madhava Singh of Panna, who was accused of conspiracy to poison his uncle; and Nanasaheb, the Chief of Aundh, had to answer before a special tribunal the charge of instigating the murder of his *karbhari*. When Maharaja Tukoji Rao Holkar of Indore was suspected of complicity in the Bawla murder, a commission of inquiry was proposed to His Highness, but the Maharaja preferred to abdicate rather than face the inquiry.

The question whether, on the analogy of International Law or as a matter resting upon treaties, the rulers are liable to be tried when they are accused of having committed an offence may be a nice point for academic discussion, but it serves no practical purpose. The courts in British India and the English courts possess no jurisdiction in such cases unless the ruler himself consents to it. But the Paramount Power has, as a matter of fact, for a long time and in a number of cases exercised the right of conducting such trials. The manner in which this right is exercised is, however, open to two grave objections. In the first place, the fundamental

principle that no man should be presumed to be guilty unless he is proved to be so by clear and satisfactory evidence is totally disregarded in such cases. The Paramount Power proceeds at once, on hearing the accusation, to suspend the ruler from the exercise of his powers even before the inquiry is started. The Gaekwar was deprived of his ruling powers pending the completion of the inquiry; the Chief of Aundh's connexion with his State was severed and he was interned in Bombay, while his accuser, the *karbhari*, was left in charge of the State. The Chief was unable even to retain the counsel he wanted for his defence, as he seems to have been refused even the amount necessary to meet their fees.

The dangers to which such a procedure are open are illustrated in the case of the Thakur of Rupal, one of the Kathiawar principalities. The Thakur was arrested on the mere suspicion that he was implicated in a murder which had occurred within the limits of his territory. A Commission was appointed to investigate the charge, and, in consequence of the findings of the Commission, he was imprisoned like an ordinary convict in a British-Indian gaol. After he had borne the sufferings of imprisonment for several years, the Government of India came to the conclusion that the verdict of the Commission could not be supported, and decided to release the Thakur on the strength of the petitions presented by his brother chiefs and subjects. Two or three years after his release, the Thakur was restored to his *gadi* and invested with full ruling powers—a belated recognition of his innocence.[1]

Secondly, the punishment awarded is not limited to the ruler alone but is extended to his entire family. The descendants of Maharaja Malhar Rao Gaekwar were for no fault of their own declared to be barred from succeeding to the rights and honours of the sovereignty of Baroda. The Chief of Aundh's mother was exiled to Benares and the Chief was not permitted to see her for twelve years, and his descendants

[1] D. K. Sen, *The Indian States*, p. 183.

were cut off from succeeding to the Aundh *gadi*. This method of punishing innocent people by depriving them of their hereditary rights is clearly high-handed and arbitrary.

The next claim of the Paramount Power is with regard to succession. It is said that no succession is valid unless it is recognized by the Paramount Power—a claim, which as already pointed out, is based on the myth that the British Crown is the successor of the Moghal Emperor. In a letter addressed to the Chief Commissioner of the Central Provinces and published in the *Gazette of India* of 22 August 1891, it was laid down as a principle that 'the formal investiture of a Chief should, if possible, be performed by a British officer. Such a course may not always be practicable, but I am to observe that the succession to a Native State is invalid, until it receives in some form the sanction of the British authorities. Consequently an *ad interim* and unauthorized ceremony, carried out by the people of a State, cannot be recognized.' The same principle was asserted in the Manipur Resolution in 1891. 'Every succession must be recognized by the British Government and no succession is valid until recognition has been given.'

The Princes took strong exception to this claim, and they asserted in a body at the Conference of Princes in 1916 'that the principle of succession in the case of Hindu States is governed by Hindu law and usage and in the case of Muhammadan States by Muhammadan law or the custom of the State concerned. In accordance therewith, succession to the late ruler takes place immediately as a matter of inherent right, and as such is not dependent on the approval, sanction or recognition of the Government of India.'

As a result of the representations made by the Princes, it is now admitted that where there is a natural heir in the direct line, he succeeds as a matter of course, and the claim that such succession requires the sanction of the Paramount Power has been abandoned. But the claim that such succes-

sion requires the recognition of His Majesty the King-Emperor still holds the field. Such recognition is conveyed by an exchange of *kharitas* of a complimentary character between the new Prince or Chief and the Viceroy or other high authority concerned. The *kharita* is presented to the new Prince or Chief by a representative of the British Government at a formal visit. In the case of successions other than those of the direct natural heir, the announcement of recognition is made by a representative of the British Government either at a durbar held for the purpose or at a formal visit of the Prince or Chief.

Another right claimed is that of taking charge of the administration of a State during the minority of its ruler. The claim was first set up during the viceroyalty of Lord Mayo, and since then the practice has come into vogue of assuming the administration of a State during the minority of its ruler and conducting it on his behalf through the agency of Political Officers. On such occasions the opportunity is taken to raise the standard of administration and bring it on a level with that in British India. In these cases the British Government is really the trustee of the ruler on whose behalf it administers the State, but this fiduciary relationship is very often forgotten in the zeal for improvement. Thus the independent coinage of Alwar and Bikanir was abolished at the time of the regency. In the case of Mysore, during the minority of His Highness the late Maharaja, the Government of India made a gift to itself of the lands, situated in the State, required for the Bangalore–Madras railway. By this gift being made absolute and unconditional the State is deprived of all chance of laying any legal claim to purchase a railway situated in the limits of its own territory.

The rights discussed above by no means exhaust the claims of the Paramount Power in its relations to the States. As one British authority puts it, whatever the original stipulatoin of the treaties may be there is in fact almost no State

with the internal affairs of which the Paramount Power has not had something to do, and it is almost impossible to give any definite explanation of what things it does meddle with and what it does not. Its interference ranges over the entire field of State activity and may extend from forcing a ruler to accept a Dewan or chief executive officer of its own choice to directing the ruler to nominate an efficient butcher for supplying good meat to the Residency. In the sphere of legislation previous consultation with the Paramount Power is required before a State undertakes to pass important laws. In Cochin, a Religious Endowment Bill which was publicly announced and on which definite action was taken by the administration had to be given up owing to refusal of sanction by the Government of India. The proposal of the same State to enact a tenancy regulation limiting the rights of land-holders was objected to on the ground that the proposed legislation was an interference in the right of property. In another major State a Bill for regularizing the procedure of extradition of criminals between British India and the State was held up for want of consent by the Government of India. In judicial matters, the decisions of the highest tribunals in the States are often impugned, and the States are sometimes asked not to execute the judgements of their courts until the Political Officer concerned has satisfied himself that there has been no miscarriage of justice.

The authority of the rulers is further undermined by Political Officers entertaining petitions from State subjects complaining against the administration, and the Durbars being asked to furnish reports in the matter. In one case, where a State demurred at furnishing such a report, the Political Agent observed: 'It is the duty of every Political Agent to satisfy himself that the State to which he is accredited is well and justly governed and he can only do this by occasionally asking for reports on selected petitions. He enforced this opinion with the remark that it was no uncommon thing to

call for information, in respect of complaints from subjects of Native States, from the biggest Durbars in India and where Chiefs had held their Powers for years, and that when he was in the Foreign Office he had seen plenty of letters asking Residents to procure such reports.'

Sometimes a ruler's powers may be compulsorily modified and his authority vested in a council presided over by a nominee of the Paramount Power, or the ruler may be asked to act strictly in accordance with the directions of the Political Officer. The recent case of the Nizam is an instance in point. The Ruler of Hyderabad was forced to appoint certain European officers as members of his council and also to nominate a president acceptable to the Viceroy. His Exalted Highness has further been told that the council system has become an integral part of the constitution of Hyderabad, and that the Government of India is interested in the appointments to the council. These words can only mean that the Ruler of the Deccan has had a constitution forced upon him which he is not free to change, and that the Government of India claim the right of 'advice' with regard to the composition of the executive council.[1]

The Princes felt apprehensive at an extension of the exercise of paramountcy that proceeded beyond the sphere of the treaties and threatened to reduce the autonomy of the States to a cipher. Their fears were further increased by the tenor of Lord Reading's reply to His Exalted Highness the Nizam's claim that the Nizams of Hyderabad were independent in the internal affairs of their State just as much as the British Government was in British India. For Lord Reading brushed aside this claim and stated in no uncertain terms that the supremacy of the British Crown was not only based upon treaties and engagements, but existed independently of them, and that one consequence involved in such supremacy was the right of the British Government to intervene in the

[1] Panikkar, *Indian States and the Government of India* pp. 64–5.

internal affairs of the States. The Princes, however, did not agree with this view of their relationship with the Paramount Power. On their behalf the Standing Committee of the Chamber of Princes requested that a special committee should be appointed to inquire into the whole question of paramountcy.

In response to this request the Indian States (Butler) Committee was appointed in 1927. The Princes engaged eminent counsel to present their case before the Committee, and elaborate arguments were adduced by counsel in support of the proposition that the exercise of paramountcy should be strictly limited to the matters covered by the treaties and engagements, and that any extension of it beyond such matters unless sanctioned by valid practice was nothing short of a breach of agreement. The Committee, however, without troubling themselves in the least with such arguments, endorsed Lord Reading's opinion, and stated: 'The relationship of the Paramount Power with the States is not a merely contractual relationship, resting on treaties made more than a century ago. It is a living, growing, relationship shaped by circumstances and policy, resting, as Professor Westlake has said, on a mixture of history, theory, and modern fact. The novel theory of a paramountcy agreement, limited as in the legal opinion, is unsupported by evidence, and is thoroughly undermined by the long list of grievances placed before us which admit of a paramountcy extending beyond the sphere of any such agreement.'[1] The Committee came to the conclusion that it was impossible to define paramountcy and said: 'We have endeavoured to find some formula which will cover the exercise of paramountcy, and we have failed, as others before us have failed, to do so. The reason is not far to seek. Conditions alter rapidly in a changing world. Imperial necessity and new conditions may at any time raise unexpected situations.

[1] *Report of the Indian States Committee*, para. 39.

Paramountcy must remain paramount, it must fulfil its obligations, defining or adapting itself according to the shifting necessities of the time and the progressive development of the States.'[1]

Paramountcy, according to the Committee, is thus absolute and unlimited and its freedom to adjust itself to 'the shifting necessities of time' is unfettered by the provisions of the treaties. This theory of paramountcy leads to the startling conclusion that the Crown can do anything that it pleases in its relations with the States, and that its actions cannot be questioned on the ground that they are not sanctioned by treaties, engagements and valid practice. Paramountcy has thus become in the hands of the Committee, as one writer puts it, 'a doctrine of "sword law", a claim that there is no law but that of force'.[2] It is true that paramountcy is 'a living and growing relationship'. But this growth should be limited and conditioned by the treaties in which paramountcy is rooted. To hold, as the Committee have done, that such growth can be un-conditioned, is to suggest that the Crown recognizes no moral or legal obligations in its dealings with the States, and that the treaties and engagements which have time and again been pronounced to be 'inviolate and inviolable' are nothing more than scraps of paper.

The Princes were greatly alarmed at this doctrine of paramountcy and sought to get it reconsidered. When the constitutional discussions at the Round Table Conference began, they immediately urged that a satisfactory settlement of the claim of paramountcy was a condition precedent of their entry into the Federation. Among the essential conditions laid down by the Chamber of Princes from time to time, the one relating to a definition of paramountcy was made a *sine qua non* of any federation. But this claim was disposed

[1] *Report of the Indian States Committee*, para. 57.
[2] D. K. Sen, *Indian States*, p. 205.

of by Sir Samuel Hoare, the then Secretary of State for India, in his telegraphic dispatch to the Government of India of 14 March 1935, by a single compelling sentence—he did not believe Their Highnesses in expressing their views on the question of paramountcy had any intention of questioning the nature of their relationship to the King-Emperor, and that this was a matter which admitted of no dispute. Reverting to the same subject later, he stated in the House of Commons: 'There have been frequent discussions over a long period of years with a view to clarifying, and so easing, the exercise of paramountcy. Much has been done in this direction with the help of leading Princes in the Chamber since its creation a decade or so ago. In the ultimate analysis, however, the Crown's relationship with the States is not merely one of contract, and so there must remain in the hands of the Viceroy an element of discretion in his dealings with the States. No successful attempt could be made to define exactly the right of the Crown's Representative to intervene.'[1]

This authoritative pronouncement settled the matter finally. The Princes seem to have realized the futility of pressing it any further, and they appear to have accordingly reconciled themselves to the position that the Crown's power in relation to themselves is absolute and limited by neither treaties nor valid practice. This unlimited paramountcy remains unaffected by the accession of a State to the Federation, but its sphere of activity will be narrowed down to some extent. It will not extend, as before, over the entire field of State activity, but will be limited to the non-federal sphere. Explaining this position, the Secretary of State for India in his telegraphic dispatch of 14 March 1935, stated: 'The greater part of the field of paramountcy is untouched by the Bill (now the Government of India Act). The Bill contemplates that certain matters which had previously been determined between the States and the Paramount Power

[1] *House of Commons Debates*, 20 March 1935, p. 1236.

will in future be regulated to the extent that the States accede to the Federation by the Legislative and Executive authority of the Federation. But in other respects and in all respects as regards non-federated States paramountcy is essentially unaffected by the Bill.' This is given effect to in the Government of India Act. It is provided that after the accession of a State becomes effective the power and jurisdiction of the Crown previously exercised on all matters accepted by the State as federal shall cease to be exercisable in that State.[1]

As a result of this provision the claim of the Paramount Power to interfere in matters accepted by a State as federal should disappear, and the exercise of paramountcy should henceforward be confined strictly to the non-federal sphere. To make matters doubly sure the Princes have suggested the insertion of an additional clause in the Instrument of Accession, to the effect that no function in respect of any matter accepted by a State as federal shall be exercisable by any authority other than a Federal authority.

The clause, however, affords no protection to the States against the Paramount Power interfering in federal matters. If it treats this clause as it did the provisions of the treaties of old and begins to interfere in the federal field, the States are absolutely helpless, for neither the provision of the Act nor the suggested clause is legally enforceable. To take a concrete case: where a State accedes to the subject of extradition, the procedure for the surrender of fugitive offenders should be dealt with, according to the Act and the suggested clause, exclusively by the Federation, and the Paramount Power should have no claim to interfere in the matter. But it might still demand the surrender from a State of a fugitive offender who could not be extradited under the Federal Law of Extradition. Similarly with regard to fire-arms, a federal subject, where a State is entitled under a

[1] *Government of India Act*, sect. 294 (2).

federal law to import arms of a particular bore, the Paramount Power might lay a prohibition against such importation. Again, the Paramount Power might seek to extinguish the right of independent coinage retained by a State under its Instrument of Accession. With regard to every one of the items accepted by a State as federal there exists the possibility of the exercise of paramountcy without the State being able to do anything to prevent such interference. In such cases there is no legal remedy against the Paramount Power. For it is a well-known principle of law, settled by a long series of decisions, that where the Paramount Power interferes in a State, it is an act of State which is essentially an exercise of sovereign power, and hence cannot be challenged, controlled, or interfered with by municipal courts.[1] Neither the Federal Court nor the Privy Council can take cognisance of such cases and grant any redress to the States.

Apart from the possibility of the Paramount Power thus encroaching upon the federal field, the Princes themselves are by no means consistent in their views. While pressing that the Paramount Power should be excluded from interfering in the federal field, and suggesting clauses designed to bring about such exclusion, they have still brought it into intimate contact with federal matters. The Chamber of Princes laid it down as an important condition that in the event of a federating State refusing or otherwise failing to discharge its federal obligations, the enforcement upon that State of compliance with the terms of its Instrument of Accession shall be the function of the Paramount Power, and this condition has been accepted by His Majesty's Government.

A right is thus conferred on the Paramount Power to intervene in federal matters. The Act imposes several obligations on the rulers without conferring a corresponding right on the

[1] *Secretary of State* v. *Kamachee Boye*, 13 M.P.C. 22.

Federation to enforce such obligations. If a ruler disregards his constitutional duties, the Federation stands helpless; within the limits of the Constitution there are really no sanctions at all for enforcing such obligations. The Governor-General will have to appeal to the Crown Representative, in cases of such recalcitrance, to use his good offices and 'advise' the ruler to fulfil his obligations. Paramountcy is thus made the federal sanction, and on its exercise depends the smooth working of the Federation. Without paramountcy a ruler might bring the federal mechanism in relation to his State to a standstill by refusing to carry out the instructions given to him by the Governor-General with regard to the administration of federal subjects, and render the judgements of the Federal Court wholly abortive by neglecting to give effect to them in his State.

APPENDIX

TABLE OF SEATS

THE COUNCIL OF STATE AND THE FEDERAL ASSEMBLY

REPRESENTATIVES OF THE INDIAN STATES

(1) *States and Groups of States*	(2) *Number of Seats in Council of State*	(3) *States and Groups of States*	(4) *Number of Seats in the Assembly*	(5) *Population*
		DIVISION I		
Hyderabad	5	Hyderabad	16	14,436,148
		DIVISION II		
Mysore	3	Mysore	7	6,557,302
		DIVISION III		
Kashmir	3	Kashmir	4	3,646,243
		DIVISION IV		
Gwalior	3	Gwalior	4	3,523,070
		DIVISION V		
Baroda	3	Baroda	3	2,443,007
		DIVISION VI		
Kalat	2	Kalat	1	342,101
		DIVISION VII		
Sikkim	1	Sikkim	—	109,808
		DIVISION VIII		
1. Rampur	1	1. Rampur	1	465,225
2. Benares	1	2. Benares	1	391,272

(1) States and Groups of States	(2) Number of Seats in Council of State	(3) States and Groups of States	(4) Number of Seats in the Assembly	(5) Population
		DIVISION IX		
1. Travancore	2	1. Travancore	5	5,095,973
2. Cochin	2	2. Cochin	1	1,205,016
3. Pudukottai	1	3. Pudukottai	1	400,694
Banganapalli		Banganapalli		39,218
Sandur		Sandur		13,583
		DIVISION X		
1. Udaipur	2	1. Udaipur	2	1,566,910
2. Jaipur	2	2. Jaipur	3	2,631,775
3. Jodhpur	2	3. Jodhpur	2	2,125,982
4. Bikaner	2	4. Bikaner	1	936,218
5. Alwar	1	5. Alwar	1	749,751
6. Kotah	1	6. Kotah	1	685,804
7. Bharatpur	1	7. Bharatpur	1	486,954
8. Tonk	1	8. Tonk	1	317,360
9. Dholpur	1	9. Dholpur	1	254,986
10. Karauli	1	Karauli		140,525
11. Bundi	1	10. Bundi	1	216,722
12. Sirohi	1	Sirohi		216,528
13. Dungarpur	1	11. Dungarpur	1	227,544
14. Banswara	1	Banswara		260,670
15. Partabgarh	1	12. Partabgarh	1	76,539
Jhallwar		Jhallwar		107,890
16. Jaisalmer	1	13. Jaisalmer	1	76,255
Kishengarh		Kishengarh		85,744
		DIVISION XI		
1. Indore	2	1. Indore	2	1,325,089
2. Bhopal	2	2. Bhopal	1	729,955
3. Rewa	2	3. Rewa	2	1,587,445
4. Datia	1	4. Datia	1	158,834
5. Orchha	1	Orchha		314,661
6. Dhar	1	5. Dhar	1	243,430
7. Dewas (Senior)	1	Dewas (Senior)		83,321
Dewas (Junior)		Dewas (Junior)		70,513
8. Jaora	1	6. Jaora	1	100,166
Ratlam		Ratlam		107,321
9. Panna	1	7. Panna	1	212,130
Samthar		Samthar		33,307
Ajaigarh		Ajaigarh		85,895

(1) States and Groups of States	(2) Number of Seats in Council of State	(3) States and Groups of States	(4) Number of Seats in the Assembly	(5) Population
		DIVISION XI—*continued*		
10. Bijawar		8. Bijawar		115,852
Charkhari	1	Charkhari	1	120,351
Chhatarpur		Chhatarpur		161,267
11. Baoni		9. Baoni		19,132
Nagod	1	Nagod	1	74,589
Maihar		Maihar		68,991
Baraundha		Baraundha		16,071
12. Barwani		10. Barwani		141,110
Ali Rajpur	1	Ali Rajpur	1	101,963
Shahpura		Shahpura		54,233
13. Jhabua		11. Jhabua		145,522
Sailana	1	Sailana	1	35,223
Sitamau		Sitamau		28,422
14. Rajgarh		12. Rajgarh		134,891
Narsingarh	1	Narsingarh	1	113,873
Khilchipur		Hilchipur		45,583
		DIVISION XII		
1. Cutch	1	1. Cutch	1	514,307
2. Idar	1	2. Idar	1	262,660
3. Nawanagar	1	3. Nawanagar	1	409,192
4. Bhavanagar	1	4. Bhavanagar	1	500,274
5. Junagadh	1	5. Junagadh	1	545,152
6. Rajpipla	1	6. Rajpipla	1	206,114
Palanpur		Palanpur		264,179
7. Dhrangadhra	1	7. Dhrangadhra	1	88,961
Gondal		Gondal		205,846
8. Porbander	1	8. Porbander	1	115,673
Morvi		Morvi		113,023
9. Radanpur		9. Radanpur		70,530
Wankaner	1	Wankaner	1	44,259
Palitana		Palitana		62,150
10. Cambay		10. Cambay		87,761
Dharampur	1	Dharampur	1	112,031
Balasinor		Balasinor		52,525
11. Baria		11. Baria		159,429
Chhota Udepur	1	Chhota Udepur	1	144,640
Sant		Sant		83,531
Lunawada		Lunawada		95,162

(1) States and Groups of States	(2) Number of Seats in Council of State	(3) States and Groups of States	(4) Number of Seats in the Assembly	(5) Population
		DIVISION XII—*continued*		
12. Bansda		12. Bansda		48,839
Sachin		Sachin		22,107
Jawhar	1	Jawhar		57,261
Danta		Danta		26,196
13. Dhrol		Dhrol	1	27,639
Limbdi	1	Limbdi		40,088
Wadhwan		Wadhwan		42,602
Rajkot		Rajkot		75,540
		DIVISION XIII		
1. Kolhapur	2	1. Kolhapur	1	957,137
2. Sangli	1	2. Sangli	1	258,442
Savantwadi		Savantwadi		230,589
3. Janjira		3. Janjira		110,379
Mudhol	1	Mudhol	1	62,832
Bhor		Bhor		141,546
4. Jamkhandi		4. Jamkhandi		114,270
Miraj (Senior)		Miraj (Senior)		93,938
Miraj (Junior)		Miraj (Junior)		40,684
Kurandwad (Senior)	1	Kurandwad (Senior)	1	44,204
Kurandwad (Junior)		Kurandwad (Junior)		39,583
5. Akalkot		5. Akalkot		92,605
Phaltan		Phaltan		58,761
Jath	1	Jath	1	91,099
Aundh		Aundh		76,507
Ramdurg		Ramdurg		35,454
		DIVISION XIV		
1. Patiala	2	1. Patiala	2	1,625,520
2. Bahawalpur	2	2. Bahawalpur	1	984,612
3. Khairpur	1	3. Khairpur	1	227,183
4. Kapurthala	1	4. Kapurthala	1	316,757
5. Jind	1	5. Jind	1	324,676
6. Nabha	1	6. Nabha	1	287,574
		7. Tehri-Garhwal	1	349,573
7. Mandi		8. Mandi		207,465
Bilaspur	1	Bilaspur	1	100,994
Suket		Suket		58,408

(1) States and Groups of States	(2) Number of Seats in Council of State	(3) States and Groups of States	(4) Number of Seats in the Assembly	(5) Population
		DIVISION XIV—*continued*		
8. Tehri-Garhwal	1	9. Sirmur	1	148,568
Sirmur		Chamba		146,870
Chamba		10. Faridkot		164,364
9. Faridkot	1	Malerkotla	1	83,072
Malerkotla		Loharu		23,338
Loharu				
		DIVISION XV		
1. Cooch Behar	1	1. Cooch Behar	1	590,886
2. Tripura	1	2. Tripura	1	382,450
Manipur		3. Manipur	1	445,606
		DIVISION XVI		
1. Mayurbhanj	1	1. Mayurbhanj	1	889,603
Sonepur		2. Sonepur	1	237,920
2. Patna	1	3. Patna	1	566,924
Kalahandi		4. Kalahandi	1	513,716
3. Keonjhar	1	5. Keonjhar	1	460,609
Dhenkanal		6. Gangpur	1	356,674
Nayagarh		7. Bastar	1	524,721
Talcher		8. Surguja	1	501,939
Nilgiri				
4. Gangpur	1	9. Dhenkanal	3	284,326
Bamra		Nayagarh		142,406
Seraikela		Seraikela		143,525
Baud		Baud		135,248
Bonai		Talcher		69,702
		Bonai		80,186
		Nilgiri		68,594
		Bamra		151,047
5. Bastar	1	10. Raigarh	3	277,569
Sarguja		Khairagarh		157,400
Raigarh		Jashpur		193,698
Nandgaon		Kanker		136,101
		Sarangarh		128,967
		Korea		90,886
		Nandgaon		182,380

(1) *States and Groups of States*	(2) *Number of Seats in Council of State*	(3) *States and Groups of States*	(4) *Number of Seats in the Assembly*	(5) *Population*
		DIVISION XVII		
States not mentioned in any of the preceding Divisions, but described in paragraph 12 of Part I of the First Schedule.	2	States not mentioned in any of the preceding Divisions, but described in paragraph 12 of Part I of the First Schedule.	5	3,032,197
Total population of the States in the Table : 78,981,912				

LIST OF CASES CITED

INDEX